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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1933

No. 228

EMANUEL L. MAZER AND WILLIAM ENDICTER,
DOING BUSINESS AS JUNE LAMP MANUFACTUR-
ING COMPANY, PETITIONERS,

vs.

BENJAMIN STEIN AND RENA STEIN, DOING
BUSINESS AS REGLOB OF CALIFORNIA

ON WRIT OF HABEAS CORPUS TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR HABEAS CORPUS FILED AUGUST 3, 1933.
HABEAS CORPUS GRANTED OCTOBER 12, 1933.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

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ING COMPANY, PETITIONERS,

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fol. 14] (File endorsement omitted)

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

Civil Action No. 5879

**BENJAMIN STEIN and RENA STEIN, doing business as REGLOR
OF CALIFORNIA, Plaintiffs,**

vs.

**EMANUEL L. MAZER and WILLIAM ENDICTER, doing business
as JUNE LAMP MANUFACTURING COMPANY, Defendants.**

AMENDED COMPLAINT—Filed November 7, 1952

Now come the Plaintiffs and for their Complaint allege as follows:

1. Plaintiffs, Benjamin Stein and Rena Stein, are citizens of the State of California and residents of the County of Los Angeles, State of California. Plaintiffs are partners doing business jointly in Montebello, County of Los Angeles, State of California, under the names and style of Reglor of California.

2. The Defendants, Emanuel L. Mazer and William Endicter, are citizens of the State of Maryland and residents of the City of Baltimore, State of Maryland. Defendants, Emanuel L. Mazer and William Endicter, are partners doing business jointly as June Lamp Manufacturing Company, 213 S. Sharp Street, Baltimore 30, Maryland.

3. This action arises under the Copyright Laws of the United States. This court has jurisdiction under Title 28, United States Code, Sections 1331 and 1338.

fol. 15] 4. Plaintiff Rena Stein created and sculptured the meritorious original works of art listed in Paragraph 5 hereof, by the exercise of her skill, labor, judgment and ability. The form, proportions, appearance, decorative features, and every significant portion of said works of art were and are wholly original with Plaintiff Rena Stein and the

same are copyrightable subject matter under the laws of the United States.

5. Plaintiffs, Benjamin Stein and Rena Stein, doing business as Reglor of California, have complied in all respects with Title 17, United States Code, paragraphs 10, 11, 13, and 19, and with all other laws governing copyright, and have secured the exclusive rights and privileges in and to the copyright of said works of art, and have received from the Register of Copyrights certificates of registration as follows:

Work	Copyright Certificate	Date of Publication of Work
Curved Ballet Dancer—Male.....	H 1721	July 15, 1949
Curved Ballet Dancer—Female.....	H 1723	July 15, 1949
Curved Dancers with Textured Clothes— Female Full Figure.....	H 1717	July 10, 1950
Curved Dancer with Textured Clothes— Male Full Figure.....	H 1724	July 10, 1950
Egyptian Dancer—Female.....	CIH 1738	January 25, 1950
Egyptian Dancer—Male.....	CIH 1737	January 25, 1950

[fol. 16] 6. At all times Plaintiffs have been, and still are, the owners of all rights, title and interest in and to the copyrights of said reproductions of works of art and all rights thereunder.

7. Defendants have infringed Plaintiffs' aforementioned copyrights by publishing, placing on the market and selling reproductions of works of art which are identical in every material respect with and copied from the aforesaid reproductions of works of art. Defendants have so made, placed on the market, and sold these reproductions of works of art within the State of Maryland, without authority of Plaintiffs.

WHEREFORE, Plaintiffs demand:

1. That Defendants, their agents, employees, representatives, officers, dealers, and those acting in privity therewith, be enjoined during the pendency of this action and permanently from infringing said copyright of Plaintiffs in any manner, and from making, selling, offering for sale, marketing or otherwise disposing of any reproductions of works of

art which are copies of or embody the appearance, style and artistry of Plaintiffs' reproductions of works of art.

2. That Defendants be required to deliver up to be impounded during the pendency of this action all copies and reproductions of the reproductions of the works of art identified herein in their possession or under their control and to deliver up for destruction all infringing copies and all patterns, molds, photographs and other matter used in making, selling, or fostering the sale of such infringing copies.

[fols. 17-20] 3. A judgment and decree holding that Plaintiffs are the owners of the copyrights on the reproductions of works of art identified herein that the said copyrights are good and valid at law; that Defendants have infringed the said copyrights; for an accounting of profits, gains and advantages derived by Defendants from the said infringement and that Plaintiffs have judgment and execution for profits gained for the Defendants and such damages as to the Court shall appear proper.

4. That Plaintiffs be granted such other and further relief as is just.

Benjamin Stein and Rena Stein, doing business as Reglor of California, By Joseph T. Brennan, 2d, Cook, Ruzicka, Veasey, and Gans, First National Bank Bldg., Baltimore, Maryland, Their Attorney. Of Counsel: Bair, Freeman & Molinare, Will Freeman, George E. Frost, 135 South LaSalle Street, Chicago 3, Illinois.

Date:

[fol. 21] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER TO AMENDED COMPLAINT—Filed November 13, 1952

Defendants Emanuel L. Mazer and William Endicter, doing business as June Lamp Manufacturing Company, answering the amended complaint, say:

1

Defendants answering paragraph No. 1 of the amended complaint are not informed save by the amended complaint of the identify of the plaintiffs and leave plaintiffs to their proofs.

2

Defendants admit the allegations of paragraph No. 2.

3

Defendants deny the allegations of paragraph No. 3.

4

Defendants deny the allegations of paragraph No. 4.

5

Defendants deny the allegations of paragraph No. 5.

6

Defendants deny the allegations of paragraph No. 6.

[fol. 22] 7

Defendants deny the allegations of Paragraph No. 7.

8

Further answering the amended complaint, defendants allege as follows:

(a) Plaintiffs' alleged copyrights as alleged were secured for statuettes as "works of art" under the Copyright Laws

and same are not "works of art" as defined in said Copyright Laws, but are articles of manufacture for a utilitarian purpose protected only by the Patent Laws.

(b) Plaintiffs' alleged copyrights were issued on alleged statuettes as alleged in the amended complaint, whereas plaintiffs have incorporated said designs in an article of manufacture for a utilitarian purpose, namely, an electric table lamp which is not copyrightable subject matter and which was not copyrighted by the Copyright Office, and plaintiffs are fraudulently and improperly using said alleged copyright notices on its said electric table lamps which were not copyrighted and hence plaintiffs come into this Court with unclean hands.

(c) Further answering, defendants allege that objects or products or articles of manufacture designed for a utilitarian purpose, such as a statuette or as electric table lamps, no matter how ornamental, are not protected by the Copyright Laws, but instead are governed by the Patent Laws, namely, Sec. 4929, 4933 of the Revised Statutes (35 U. S. C. 73) which provide as follows:

"Any person who has invented any new, original, and ornamental design for an article of manufacture, not known or used by others in this country before his invention thereof, and not patented or described in any printed publication in this or any foreign country before his invention thereof, or more than one year [fol. 23] prior to his application thereof, and not in public use or on sale in this country for more than one year prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law and other due proceedings had, the same as in cases of inventions or discoveries covered by section 31 of this title, obtain a patent therefor.

"All the regulations and provisions which apply to obtaining or protecting patents for inventions or discoveries not inconsistent with the provisions of this title, shall apply to patents for designs. (R. S. secs. 4929, 4933; May 9, 1902, ch. 783.32 Stat. 193; Aug. 5, 1939, ch. 450, sec. 1, 33 Stat. 1212.)"

(d) Further answering, defendants aver that the rules and regulations of the Copyright Office provide that under the classification of "Works of Art" the mechanical or utilitarian aspects of the "works of art" are not protected by the copyright registration. (Secs. 202.8) 17 U. S. C. A. following Sec. 207) provides:

"Works of art (Class C)—(a) In general. This class includes works of artistic craftsmanship, insofar as their form but not their mechanical or utilitarian aspects are concerned, such as artistic jewelry, enamels, glassware and tapestries, as well as all works belonging to the fine arts, such as paintings, drawings or sculpture."

(e) Further answering, defendants aver that the plaintiffs have not secured design patents on their alleged "works of art" as is required under the Patent Laws, and hence cannot maintain an action for infringement of a utilitarian object such as an electric table lamp, which is the only product that the defendants are manufacturing and/or selling and which is the product the plaintiffs are likewise manufacturing and selling.

[fol. 24] (f) Further answering, defendants aver that they have not manufactured or sold statuettes embodying the alleged copyrighted "works of art", but that defendants have only manufactured and sold electric table lamps which were not copyrighted by plaintiffs and that same are not subject to the copyright laws and therefore defendants have not infringed plaintiffs' alleged copyrights.

(g) Defendants further allege that the alleged "works of art" set forth in the amended complaint are old and well-known configurations used by others long prior to plaintiffs' alleged creations and pray leave to add same to their answer when discovered.

9

Defendants further allege that the copyright issues involved in the instant litigation have been determined adversely to plaintiffs by the U. S. Court of Appeals for the Seventh Circuit on May 2, 1951 in the case of No. 10347, Benjamin Stein, Rena Stein and H. Kutner, doing business

as *Reglor of California vs. Expert Lamp Company*, a corporation reported in 188 Fed. (2d) 611; and that rehearing was denied May 22, 1951; and that certiorari to the Supreme Court was denied, 342 U. S. 829.

(a) Defendants further specifically allege that the plaintiffs in this case in the aforementioned suit sued for infringement of similar alleged copyrighted "works of art" [fol. 25] and that the U. S. District Court, on a motion by defendant to dismiss the amended complaint and for summary judgment, sustained defendant's motion and dismissed the complaint without trial. On appeal by plaintiffs, the United States Circuit Court of Appeals for the Seventh Circuit in a unanimous decision on May 2, 1951 affirmed the District Court, sustaining the dismissal of the complaint of the copyright action, holding that the alleged copyrighted "works of art" did not give the plaintiffs a monopoly on articles of manufacture having a utilitarian purpose, nor prevent the reproduction of the designs of said alleged copyrighted "works of art" in electric table lamps, as such designs could not be protected as a monopoly by a mere copyright which is perfunctorily granted by the Copyright Office without examination as to originality or novelty, but could not be protected only by Design patents under the Patent Laws, where an examination is conducted as to originality, novelty and inventiveness. After rehearing was denied the plaintiffs then petitioned the Supreme Court of the United States for a writ of certiorari, and after briefs were filed by both parties the Supreme Court denied certiorari, 342 U. S. 829.

(b) Defendants further answering allege that the alleged "works of art" in said aforementioned litigation were allegedly filed and copyrighted in precisely the same manner as the alleged copyrights in the amended complaint and that said alleged copyrights in said amended complaint are invalid and void for the same reason as set forth in the decision of the United States Circuit Court of Appeals for the Seventh Circuit.

[fol. 26] Wherefore (a) defendants allege that said alleged copyrights do not give plaintiffs a monopoly on articles of manufacture having a utilitarian purpose, and further allege that said alleged copyrights do not give plaintiffs a monop-

oly so as to prevent the reproduction of the designs of said alleged copyrights in electric table lamps.

(b) Defendants deny that their electric table lamps are an infringement of plaintiffs' alleged copyrighted "works of art" on statuettes, and further that plaintiffs do not have any design patents on same, and that the alleged copyrights do not prevent the reproduction or the manufacture and sale of same.

(c) Defendants allege that plaintiffs' alleged copyrights on said "works of art" do not cover electric table lamps or statuettes and that plaintiffs by placing an alleged copyright notice on their said electric table lamp are guilty of unclean hands and are not entitled to the relief prayed for in the amended complaint.

Wherefore defendants deny that plaintiffs are entitled to any of the relief prayed for in the amended complaint, or to any other relief whatsoever in this cause; defendants deny plaintiffs' rights to obtain an injunction or to any recoveries or damages or profits and pray that the complaint in all of its respect to be dismissed with costs, including reasonable attorneys' fees to the defendants.

Emanuel L. Mazer and William Endieter, d/b/a June Lamp Manufacturing Company, Defendants; by their attorneys, Max Richard Kraus, 33 North LaSalle Street (1122) Chicago 2, Illinois, and Leonard H. Wonneman, 401 Gillet Bldg., Baltimore 2, Maryland.

November 10, 1952.

[fol. 27]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

DEFENDANTS INTERROGATORIES—Filed November 18, 1952

Now come defendants, Emanuel L. Mazer and William Endieter, a partnership d/b/a June Lamp Manufacturing Company, and serves the following interrogatories on plaintiffs Benjamin Stein and Rena Stein, a partnership d/b/a

Reglor of California, to be answered by defendants according to Rule 33 of the Federal Rules of Civil Procedure:

(1).

(a) With respect to alleged Copyright No. H 1721, state the date that same was first sold as a statuette, and state the date that same was shipped and to whom.

(b) State the date when payment was received for the sale referred to in sub-paragraph (a).

(c) Commencing with the date of first sale as a statuette to the date of institution of this suit, state how many were sold as statuettes.

[fol. 28] (d) Referring to sub-paragraph (c) to whom were such statuettes sold and on what dates.

(e) Attach copies of the invoices or if unavailable of sales records (photostatic or otherwise) of each of such sales referred to in sub-paragraph (d) and give the dates shipments were made and the dates payments were received therefore.

(f) State the date that same was first sold as electric table or floor lamps.

(g) Commencing with the date of first sale as an electric table lamp to the date of institution of this suit, state how many were sold as electric table lamps.

2. With respect to Copyright No. H 1723, answer the interrogatories in sub-paragraphs (a) to (g) inclusive of No. 1, and supply corresponding records, and for purposes of clarity identify such answers as 2(a) to 2(g), inclusive.

3. With respect to Copyright No. H 1717, answer the interrogatories in sub-paragraphs (a) to (g) inclusive of No. 1, and supply corresponding records, and for purposes of clarity identify such answers as 3(a) to 3(g), inclusive.

[fol. 29] 4. With respect to Copyright No. H 1724, answer the interrogatories in sub-paragraphs (a) to (g), inclusive of No. 1, and supply corresponding records, and for the purpose of clarity identify such answers as 4(a) to 4(g), inclusive.

5. With respect to Copyright No. CIH 1737, answer the interrogatories in sub-paragraphs (a) to (g) inclusive of No. 1, and supply corresponding records, and for purposes of clarity identify such answers as 5(a) to 5(g), inclusive.

6. With respect to Copyright No. CIH 1738, answer the interrogatories in sub-paragraphs (a) to (g), inclusive of No. 1, and supply corresponding records, and for purposes of clarity identify such answers as 6(a) to 6(g), inclusive.

Leonard H. Wonneman, Max R. Kraus, attorneys
for Defendants, 401 Gillet Bldg., Baltimore 2, Md.

October 28, 1952.

Acknowledgment of service (omitted in printing).

[fol. 30] (File endorsement omitted)

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ANSWERS TO DEFENDANTS' INTERROGATORIES—Filed November
18, 1952.

1. Respecting copyright H-1721, entitled "Curved Ballet Dancer, Male."

(a) All sales have been as statuettes. Some have been with lamp parts added. Others have been without lamp parts. The first sale with lamp parts took place on July 15, 1949. The first sale without lamp parts took place just prior to August 10, 1950. The sale without lamp parts was to El Futuro, 1283 Sixth Avenue, New York, N. Y. Shipment took place on August 10, 1950.

(b) Payment was received on the first sale of the statuette with lamp parts shortly after July 15, 1949. Payment was received on the first sale of the statuette without lamp parts on August 28, 1950.

(c) A total of approximately 960 sales have been made of this number. Of these two have been sold without lamp parts.

[fol. 31] (d) The sales of the statuettes with lamp parts have been to customers throughout the United States and have taken place during the entire time from

July 15, 1949, to the date of institution of this suit. The sales of the statuettes without lamp parts were made to El Futuro just prior to August 10, 1950, and just prior to October 6, 1950.

(e) The invoices of sales of the statuettes with lamp parts are so numerous that Plaintiffs cannot attach the same. The invoices of the sales without lamp parts are attached.

(f) See answer (a), above.

(g) See answer (c), above.

2. Respecting copyright H-1723 entitled "Curved Ballet Dancer, Female."

(a) All sales have been as statuettes. Some have been with lamp parts added. Others have been without lamp parts. The first with lamp parts took place on July 15, 1949. The first sale without lamp parts took place just prior to August 10, 1950. The sale without lamp parts was to El Futuro, 1283 Sixth Avenue, New York, N. Y. Shipment took place on August 10, 1950.

(b) Payment was received on the first sale of the statuette with lamp parts shortly after July 15, 1949. Payment was received on the first sale of the statuettes without lamp parts on August 28, 1950.

[fol. 32] (c) A total of approximately 1100 sales have been made of this number. Of these two have been sold without lamp parts.

(d) The sales of the statuettes with lamp parts have been to customers throughout the United States and have taken place during the entire time from July 15, 1949, to the date of institution of this suit. The sales of the statuettes without lamp parts were made to El Futuro just prior to August 10, 1950, and just prior to October 6, 1950.

(e) The invoices of sales of the statuettes with lamp parts are so numerous that Plaintiffs cannot attach the same. The invoices of the sales without lamp parts are attached.

(f) See answer (a), above.

(g) See answer (c), above.

3. Respecting copyright H-1717, entitled "Curved Dancers with Textured Clothes, Female Full Figure."

(a) All sales have been as statuettes. Some have been with lamp parts added. Others have been without lamp parts. The first sale with lamp parts took place on July 10, 1950. The first sale without lamp parts took place just prior to November 22, 1950. The sale without lamp parts was to Cook's Modern Homes of Dallas, Texas. Shipment took place on November 22, 1950.

(b) Payment was received on the first sale of the statuette with lamp parts shortly after July 10, 1950. Payment was received on the first sale of the statuette without lamp parts on December 8, 1950.

[fol. 33] (c) A total of approximately 2,050 sales have been made of this number. Of these, four have been sold without lamp parts.

(d) The sales of the statuettes with lamp parts have been to customers throughout the United States and have taken place during the entire time from July 10, 1950, to the date of institution of this suit. The sales of the statuettes without lamp parts were made to Cook's Modern Home, just prior to November 22, 1950; Klipstein, of North Hollywood, California, just prior to November 22, 1950; the Malikini of Chicago, Illinois, just prior to December 11, 1950, and May 18, 1951.

(e) The invoices of sales of the statuettes with lamp parts are so numerous that Plaintiffs cannot attach the same. The invoices on the sales without lamp parts are attached.

(f) See answer (a), above.

(g) See answer (c), above.

4. Respecting copyright H-1724 entitled "Curved Dancer with Textured Clothes, Male Full Figure."

(a) All sales have been as statuettes. Some have been with lamp parts added. Others have been without lamp parts. The first sale with lamp parts took place on July 10, 1950. The first sale without lamp parts took place just prior to November 22, 1950. The sales without lamp parts was to Klipstein of North Hollywood, California. Shipment took place on November 22, 1950.

[fol. 34] (b) Payment was received on the first sale of the statuette with lamp parts shortly after July 10, 1950. The first sale of the statuette without lamp parts was on a no-charge basis.

(c) A total of approximately 1830 sales have been made of this number. Of these, one was sold without lamp parts.

(d) The sales of the statuettes with lamp parts have been to customers throughout the United States and have taken place during the entire time from July 10, 1950, to the date of institution of this suit. The sales of the statuettes without lamp parts was made to Klipstein just prior to November 22, 1950.

(e) The invoices of sales of the statuettes with lamp parts are so numerous that Plaintiffs cannot attach the same. The invoice on the sale without lamp parts is attached.

(f) See answer (a), above.

(g) See answer (c), above.

5. Respecting copyright CIH 1737 entitled "Egyptian Dancer, Male."

(a) All sales have been as statuettes with lamp parts added. The first sale took place on January 25, 1950.

(b) Payment was received on the above first sale shortly after January 25, 1950.

(c) A total of approximately 750 sales have been made of this number. All have been with lamp parts added.

[fol. 35] (d) The sales of the statuettes with lamp parts have been to customers throughout the United States and have taken place during the entire time from January 25, 1950, to the date of institution of this suit.

(e) The invoices of sales of the statuettes with lamp parts are so numerous that Plaintiffs cannot attach the same.

(f) See answer (a), above.

(g) See answer (c), above.

6. Respecting copyright CIH 1738, entitled "Egyptian Dancer, Female."

(a) All sales have been as statuettes. Some have been with lamp parts added. Others have been without lamp parts. The first sale with lamp parts took place on January 25, 1950. The first sale without lamp parts took place just prior to November 24, 1950. The sale without lamp parts was to El Futuro, 1283--6th Avenue, New York, New York. Shipment took place on November 24, 1950.

(b) Payment was received on the first sale of the statuette with lamp-parts shortly after January 25, 1950. Payment for the first sale of the statuette without lamp parts was on December 7, 1950.

(c) A total of approximately 760 sales of this number have been made. Of these one was sold without lamp parts.

[fols. 36-46] (d) The sales of the statuettes with lamp parts have been to customers throughout the United States and have taken place during the entire time from January 25, 1950, to the date of institution of this suit. The sale of the statuettes without lamp parts was made to El Futuro just prior to November 24, 1950.

(e) The invoices of the sales of the statuettes with lamp parts are so numerous that Plaintiffs cannot attach the same. The invoice on the sales without lamp parts is attached.

(f) See answer (a), above.

(g) See answer (c), above.

Benjamin Stein and Rena Stein, doing business as Reglor of California, by Joseph T. Brennan, 2d., Attorneys for Plaintiffs.

November 12, 1952.

Acknowledgment of Service (omitted in printing).

[fol. 46a] PLAINTIFF'S EXHIBIT No. 14

Case No. 5879 Civil

Admitted in Evidence Nov. 20, 1952

IN THE UNITED STATES DISTRICT COURT, DISTRICT OF
MARYLAND

Civil Action No. 5879

BENJAMIN STEIN and RENA STEIN, doing business as
Reglor of California, Plaintiffs

vs.

EMANUEL L. MAZER and WILLIAM ENDICTER, doing business
as June Lamp Manufacturing Company, Defendants

STIPULATION

It is hereby stipulated by and between the parties hereto that the testimony of Mr. Benjamin Stein in the case of *Stein et al vs. Benaderet, et al*, No. 11,119, United States District Court for the Eastern District of Michigan may be used in the above case with the same force and effect as if taken on deposition in the above case.

It is further agreed that Mr. Stein, if called to testify in the above case and interrogated by counsel for Defendants, would testify as follows:

Q. In your answers to Defendant's interrogatories you state that the statuettes have been sold with lamp parts added. Does that term, wherever used, mean electric table lamps with wiring, electric sockets, and lamp shades?

A. Yes.

It is further stipulated that each of Plaintiffs' exhibits 1A, 2A, 3A, 4A, 5A and 6A is a specimen submitted to the [fol. 46b] Copyright Office and the copyright certificates, Plaintiffs' exhibits 1, 2, 3, 4, 5 and 6, respectively were received upon the basis of specimens submitted to the

Copyright Office and in every physical respect like Plaintiffs' exhibits 1A, 2A, 3A, 4A, 5A and 6A.

Joseph T. Brennan, 2d., Cook, Ruzicka, Veazey & Gans, 1904 First National Bank Bldg., Baltimore 2, Maryland; George E. Frost, Counsel for Plaintiffs. Max R. Kraus, Counsel for Defendant.

[fol. 47a] IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

EXCERPTS FROM TRANSCRIPT OF TESTIMONY—Filed January
5, 1953

WILLIAM ENDICTER, was called as a witness for and on behalf of the plaintiff and, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you please state your name for the record.

The Witness: William Endicter.

Direct examination.

By Mr. Frost:

Q. Where do you live?

A. In Baltimore.

Q. And your occupation?

A. Lamp manufacturer.

Q. Under what name do you do business?

A. June Lamp Manufacturing Company.

Q. Is that a partnership?

A. That is right.

Q. Who are the partners?

A. Myself and Emanuel L. Mazer.

Q. And you are the defendants in this cause?

A. That is right.

Q. How long has the partnership been in business?

A. Approximately four years.

Q. Prior to that time you were in the lamp manufacturing business?

A. That is right.

• • • • •

By Mr. Frost:

Q. Mr. Endieter, do you manufacture the exhibits here identified as Plaintiffs' Exhibits 1-B to 6-B inclusive?

A. That is right.

Q. Now, Mr. Endieter, would you call those California style numbers?

A. Yes, I have.

• • • • •

Cross-examination.

By Mr. Kraus:

Q. With respect to these units, can you tell me what your profit was per lamp?

A. Eighty-five cents per unit net profit.

Q. Per lamp?

A. Yes.

Q. Did you sell any statuettes apart from lamps?

A. No, I did not.

Q. Every one you sold was wired electrically?

A. That is right.

Q. And had an electric socket?

A. Yes.

Q. And had a shade thereon?

A. That is right.

Q. And you sold a total of 120 units all together?

A. 102.

• • • • •

The Court: Was this wholesale?

The Witness: That is right, Your Honor.

The Court: What was the wholesale unit price?

The Witness: The wholesale price, \$10.95 each complete with shade.

[fol. 47b] BENJAMIN STEIN, a witness on behalf of the Plaintiffs, having been first duly sworn by the Clerk, testified as follows: *

Direct examination.

By Mr. Frost:

Q. Will you state your full name, please?

A. Benjamin Stein.

Q. Where do you live?

A. 732 South Maple Avenue, Montebello, California.

Q. What is your business?

A. I am a lamp manufacturer.

Q. And under what name do you do business?

A. Reglor of California?

Q. Is Reglor a partnership?

A. It is.

Q. Who are the partners?

A. My wife and myself.

Q. And you and your wife are the plaintiffs in this suit?

A. We are.

Q. Just for the purposes of the record, Mr. Stein, will you give us your wife's name?

A. Rena E. Stein.

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Q. Now, Mr. Stein, can you tell us very briefly the history of Reglor of California?

A. We started our business in the latter part of 1947, my wife and myself. There were just the two of us engaged in the business for approximately two years, and during that time, my wife kept designing new pieces, and as we added to the line and our sales increased, why, we developed and the business became a national organization.

Q. Mr. Stein, do your numbers differ from the numbers on the market at the time you began business?

A. Yes, they did.

* Introduced by Plaintiffs from the case of Stein v. Bernaderet et al., (No. 11,119, Eastern District of Michigan) per stipulation, Plaintiffs' Exhibit 14.

Q. And in what respect did they differ?

A. The pieces in existence at that time were very static, straight they did not have the fluidity of movement that Mrs. Stein brought into her sculpture and designing.

[fol. 47c] Q. Mr. Stein, I hand you a document identified as Plaintiff's Exhibit 25 * for identification, and ask you if you will please identify it?

A. This is an illustrated price list that we brought out approximately two years ago.

Q. I bring your attention to the pictures on Exhibit 25.* Can you identify them?

A. Yes; those are pieces that are in the line at the present time.

Q. Where did those numbers originate?

A. These are all original designs that were made and sculptured by Mrs. Stein.

Q. And Mrs. Stein is an artist?

A. She is definitely an artist.

Q. And she sculptured—

A. (Interposing) Every piece.

Q. (Continuing)—every piece?

A. Absolutely.

Q. Do you have any company policy in that respect?

A. Very definitely. The field at the time we went into it was such that we had no prior experience in this particular business. Consequently, we stress one thing and that was originality, freshness, in this particular field, and we have always strived to be original and stick only to innovations and fine sculptures. Anyone can sell a pipe and a shade. We are selling the design.

* * * * *

The Court: Did you go into the lamp business right at the start or in the statuette business?

A. Your Honor, we sold statuettes at first.

The Court: For how long?

A. A very short while. I don't think it was over three months, your Honor.

* Plaintiffs' Exhibit 12 in the present cause (R. 58-9).

The Court: And did somebody take one of your statuettes and make a lamp out of it?

A. They did.

[fol. 47d] The Court: Then showed it to you, and you thought it was a good idea to go into the lamp business?

A. No, sir. We made statuettes for a lamp manufacturer who purchased our entire output, which at that time was three hundred a week. All right. He said he would take three hundred for forty production weeks, of just statuettes.

The Court: Did you know that they were going to be used for lamps?

A. Yes.

The Court: Going to be used for lamps?

A. Yes, your Honor. Well, at the end——

The Court: (Interposing) That is after three months?

A. Well, we sold statuettes on our own prior to that.

The Court: As statues?

A. That is right.

The Court: But not as lamps?

A. No.

The Court: That is what I am trying to find out, how you got so that you were using these statuettes of yours as lamps.

A. It was the design that demanded it.

The Court: I know. But what I am trying to find out is, you started out with the statuette business?

A. Yes.

The Court: Somebody took one of your statuettes and made a lamp out of it, didn't they?

A. That is right, your Honor.

The Court: Who was that?

A. Lighthouse Lamp and Shade Company.

The Court: Not connected with you?

A. No. We sold them our bases.

Q. And just what is your procedure with reference to copyrighting your numbers?

A. We submit two specimens to the Copyright Office in Washington, D. C. We submit these without any metal parts or any preparation for lamp making. They are submitted as statues only, and works of art, through the Copy-

right Office. It is on this basis that we then receive from the Congressional Library, or the Copyright Office, the Copyright for the statue that we forwarded in application form under separate cover.

[foi. 47e] Q. Mr. Stein, do you identify Plaintiff's Exhibit 4?

A. I do.

Q. And what is it?

A. That is one of the two specimens we sent to the Copyright Office.

The Court: When this goes to the Copyright Office, they have no idea what it might be used for, that is, except as they might anticipate? It comes to them as a statue?

A. That is right.

The Court: Or a statuette?

A. That is right.

.

By Mr. Frost:

Q. Now, Mr. Stein, will you just tell us how Plaintiff's Exhibit 1 was created?

A. Mrs. Stein started with perhaps six to ten rough pencil sketches of a subject she has been considering. She then makes a composite drawing of what she feels to be her best work of a group of sketches that she has completed. At that time, she then starts with a mass of clay for her armature. She adds the clay to her armature and follows along the general lines of her sketch. Now, frequently and quite often as she progresses with the design she will deviate when she feels deviation from the original sketch will enhance the beauty of her work. Then, of course, we have the completed sculptured clay model.

Q. How is that produced, Mr. Stein?

A. The clay model?

Q. Yes?

A. Naturally, that is a process of her sculpturing. The next stage, of course, we have to obtain from the clay a transfer into a harder substance than can then be made into a rubber mold, and that is done through a process that is called waste mold.

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Q. And in the center portion of Exhibit 26-A, Plaintiff's Exhibit 26-A, you note a legend that has been encircled in red reads:

[fol. 47f] "Reglor lamps are available singly or in matched male and female pairs . . . all bases are also available as statues only."

What does that signify to you, Mr. Stein?

A. That means exactly what it states, in that we make available to anyone that desires a statue, a statue only.

Q. Now, tell me, Mr. Stein, do you have a company policy with reference to that?

A. Very definitely. Ever since we have been in business, we have always offered statues to the trade who were desirous of selling statues.

Q. And with reference to the legend on the back side of Plaintiff's Exhibit 25,* that refers to the same policy?

A. It does.

Q. Now, Mr. Stein, have you actually sold any of these numbers as statuettes only?

A. Yes, sir; we have.

Q. Can you give us a rough idea of the number of those sales?

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A. I would say several hundred statuettes have been sold.

Q. And how did you determine that number, Mr. Stein?

A. I checked the figures for 1952. I called my office in Los Angeles and had them read off to me the name of the account, the statues that were sold, and the date they were shipped, and I have that in here, and that totals, for 1952, to about forty-one statuettes.

Q. And then you took that data and multiplied it by the number of months you have been selling to get several hundred?

A. That is right, Mr. Frost.

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* Plaintiff's Exhibit 12 in the present cause.

Q. Mr. Stein, do you know of any occasion where Reglor of California has refused to sell a statuette as distinguished from a complete lamp.

A. Absolutely no.

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[fol. 47g] Cross Examination by Mr. Kraus.

Q. Mr. Stein, were you the plaintiff in the case in Chicago entitled Benjamin Stein, Rena Stein and Henry Kutner doing business as Reglor of California against Expert Lamp Company?

A. Yes.

Q. That case was tried and went from the District Court, and also a petition for certiorari was filed in the Supreme Court of the United States and was denied. Is that correct?

A. I believe that is right.

Q. Now, in that case, the figures involved were Balinese figures, were they not?

A. That is right.

Q. Male and female. Now, how did you copyright those statuettes?

A. Those statuettes were sent to the Copyright Office as statuettes, but, through a misunderstanding between myself and Mr. Frost, in our brief he stated they had pipe protruding, which they did not, and the whole case hinged on that.

.

Q. Now, the copyright you forwarded to the copyright office was an ordinary statuette, was it not, in that other case, the two Balinese figures, without stubs; is that correct?

A. That is right.

Q. Now, I show you the transcript of record in the Supreme Court of the United States and ask you to look at page 52-A and ask you if that is not the way they were copyrighted there, the statue?

A. That is right.

Q. Now, there are no stubs on that?

A. No stubs protruding.

Q. And there are no stubs on any of the statuettes you copyrighted here; is that correct?

A. That is correct.

Q. In other words, the figures in that case, in the Expert case, were copyrighted in the identical manner that they were copyrighted here; is that correct?

A. And the same way they were in the California case. [fol. 47h] The Court: All of these lamps, as I understand it are copyrighted as statues?

A. That is right.

Mr. Kraus: Yes. What I am trying to bring out is that the Expert case statues were copyrighted in the identical manner as they were. There is no distinction between the two cases.

The Court: Wasn't there in that case—didn't the court in that case refer to the fact that they were copyrighted as lamps?

Mr. Kraus: Yes. I will bring that out on my—in the Court of Appeals, the Court of Appeals didn't make that distinction.

The Court: Was it brought to the attention of the Court of Appeals?

Mr. Kraus: Absolutely. On a petition for reconsideration.

The Court: I would think it would have been. All right.

Mr. Kraus: I will produce the record in that case.

The Court: Have you got the briefs in that case?

Mr. Kraus: I have my brief. I have here a—

The Court: (Interposing) Did you appear in that case?

Mr. Kraus: Yes. Mr. Frost and I. This is the same case. We are both familiar with it. I appeared for the defendant and Mr. Frost appeared for the same plaintiff in that case.

The Court: You take the position, Mr. Frost, that the facts as they went to the court in that case are not the same as the situation in this case?

Mr. Frost: Yes, your Honor.

The Court: All right.

Q. (By Mr. Kraus) But you admit, do you not, that the figures that were copyrighted in the Expert case in Chicago were copyrighted in the identical manner that the figures are here copyrighted; is that correct?

A. That is correct.

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[fol. 47i] Deposition of Testimony of Mr. ARTHUR FISHER,
Register of Copyrights:

Q. Will you state your name please?

A. Arthur Fisher.

Q. What is your position?

A. Register of Copyrights of the United States.

Q. What are your duties?

A. My principal duties are to administer the Copyright Law which is Title 17 of the United States Code. My duties include the registration of claims to copyrights, the making of rules and regulations, the recordation of assignments of copyrights, publication of catalogue of copyright entries, and those other statutory duties provided by said Title 17.

Q. How long have you been engaged in this work?

[fol. 47j] A. I have been in the copyright office for about five and one-half years, originally an Associate Register for about four years. I was Acting Register for about a year, and I have been Register of Copyrights for something like nine months.

Q. Can you state what the practice of the copyright office is with respect to Section 5 (g) of the Copyright Code?

A. The practice of the copyright office is to register claims for copyrights in any work which in our opinion is a work of art, even though such work has a mechanical or utilitarian aspect. Such works must be the product of artistic craftsmanship and may include works of art such as those used for bookends, ash trays, piggy banks and so forth.

Q. When was this practice introduced in the Copyright Office?

A. I do not know when the practice was first instituted, but it was followed at the time I first came to the Copyright office in 1946, at which time the practice was well established.

Q. Is the practice of the copyright office that you have just referred to covered by regulations?

A. It only has general rules and regulations. We also

have a particular regulation which is Regulation 202.8 dealing with the registration of works of art.

Mr. Frost: May we have this document marked as Plaintiffs' Exhibit No. 7 for identification please?

(Regulations of Copyright Office were marked for identification, Plaintiffs' Exhibit No. 7)

By Mr. Frost:

Q. I hand you a document marked Plaintiffs' Exhibit No. 7 for identification and ask if you can tell us what it is.

A. This document is the regulation of the Copyright Office included in the Code of Federal Regulations, Title 37-Patents, Trade-marks and Copyrights, Chapter II-Copyright Office, Library of Congress. They were issued December 22, 1948.

[fol. 47k] This embodies, I believe, the present regulations of the office with a minor modification which does not deal with the subject of registration of works of art.

Q. Does Plaintiffs' Exhibit No. 7 include Section 202.8 of the regulations?

A. It does include regulation 202.8.

Q. Will you please encircle regulation 202.8 on Plaintiffs' Exhibit No. 7?

Mr. Frost: Let the record show that the witness has encircled Section 202.8 of the regulations as requested.

Mr. Frost:

Q. I notice that Section 202.8 of the regulations includes this language, and I quote:

" * * * works of artistic craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned, * * * "

Can you tell us in some detail the meaning of that language?

A. In applying the words to which you refer to applications for registration of works of art, it is the practice of the Copyright Office to make a determination as to whether the work submitted is or is not a work of art. The

phrase "insofar as their form but not their mechanical or utilitarian aspects are concerned" is interpreted by the office and by our examiners to permit them to deal only with the question of whether the work is a work of artistic craftsmanship, and they consider, it is our practice to consider as immaterial whether the work may also have a mechanical or utilitarian aspect.

We do not consider that we are registering or dealing with that mechanical or utilitarian aspect but are only dealing with the artistic aspect of the work which is submitted under an application for a work of art.

I might give some example of that. For example if this Daumier etching, engraving that I have on the wall were framed and were submitted to us with some indication that it was to be used as a modern tea tray with a stand, our office would deal only with the artistic aspects of the work and would not be concerned with the fact that it also had a utilitarian use or purpose.

[fol. 47-1] Again, we frequently will receive applications for the registration of paintings on plates, for example. We register the painting on the plate but we are not concerned with the fact that the material upon which the painting is made may be intended as an article of utility for the handling of food. In other words the practice of the office with respect to this phrase about which I am asked is not to undertake to register or deal with the mechanical or utilitarian aspects, but exclusively to determine whether the work that is submitted to us is a work of art and we disregard the question of whether it has in addition a mechanical or utilitarian function.

Q. Mr. Fisher, is there any history of the Copyright Law drawing any distinctions between fine arts and other art?

A. It is my understanding that before the substantial modifications of the law in 1909 the Statute contained a reference to works of art as works of fine art.

When consideration was being given to the Bill that led to the Act of 1909, the then librarian of Congress, Mr. Putnam, testified on this aspect of the law, his testimony appearing at the hearings of the Committee of Patents of the House of Representatives of June 6, 1906 at, I believe, page eleven. The librarian testified:

"* * * the term 'works of art' is deliberately intended as a broader specification than 'works of the fine arts' in the present statute with the idea that there is subject-matter (for instance, of applied design, not

yet within the province of design patents), which may properly be entitled to protection under the Copyright Law."

It is my understanding that following this modification of the Statute eliminating the reference to fine arts, the practice developed in the office of registering works of art which were determined to be works of art even if they were not works of fine art in the strict sense and even if they had a utilitarian aspect.

By the time I came to the office that practice seemed to be well established and the rule to which I have already [fol. 47-m] made reference which is in the present regulations of the Copyright Office, 202.8, was adopted to express the then existing practice of the office and that practice has continued, to my knowledge, right down to the present time.

Q. Mr. Fisher, as Register of Copyright Rights, have you made a study of the history of copyright laws?

A. Well, I don't pose as a leading historian of copyright laws but I have had occasion to look at the history of the laws of various countries including the United States in the development of copyright laws.

Q. Have you studied the hearings from which you have quoted?

A. I have had occasion to read some of the testimony which was submitted in connection with the adoption of the Act of 1909 which is still our basic statute with minor modifications.

Q. And you take that into consideration in applying the copyright law in the Copyright Office?

A. Yes, I would consider the statement of the Librarian of Congress, of which institution the Copyright Office is a part, had some bearing on the procedures and practices which ought to be followed by my office so long as the Law of 1909 is still the basic law on the books.

Mr. Frost: I have an object I would like you to mark as Plaintiffs' Exhibit No. 8 for identification.

(Whereupon a piece of statuary was marked for identification as Plaintiffs' Exhibit No. 8 and retained in the office of the Register of Copyrights.)

By Mr. Frost:

Q. I hand you Plaintiffs' Exhibit No. 8 for identification and ask you if you can tell us what that is?

A. Well, I believe this is a piece of statuary, artistic

in character, an artistic figure that was submitted to the Copyright Office for registration.

It seems to bear a stamp of our office and the number CIH 1723.

* * * * * *

Q. Would you register Plaintiffs' Exhibit No. 8 if you knew that it was to be used as a lamp base?

[fol. 47-n] A. As I have said before our problem is to determine whether the work submitted is a work of art. We make that determination and registration even though we may have reason to believe that the work of art may happen to be used for some other purpose.

Q. Have you any written record of the determination?

A. Yes, the very fact that there is a stamp that it is accepted for registration means that there was a determination that this, in the determination of the Copyright Office, is a work of art.

* * * * * *

Q. Referring to regulation 202.8 of the Copyright Office, the wording of that section is as follows:

"This class includes works of artistic craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned——"

Keeping that in mind, Mr. Fisher, when you take a work of art and register it and give the party who has registered that work of art a certificate indicating such registration, you just give them the rights insofar as that particular figure is concerned insofar as its artistic craftsmanship is concerned. Am I correct in that statement?

A. Our determination I believe is that that work is a work of art. The question arises as to what is a work of art in any particular case. I believe that is a question of fact in each case. We try to make a determination as to whether there has been artistic craftsmanship expended in the production of this work of art, quite apart from the utilitarian or mechanical aspects of the work.

Q. In other words, from your answer, it is my understanding that by issuing the certificate of registration you give such applicant no rights as far as mechanical or utilitarian purpose is concerned?

A. I believe that is correct. We are undertaking to register the artistic aspect of the product and not its utilitarian or mechanical purpose.

To give another example in another field, in the receiving of literary work we will register the literary property. We are not concerned with the fact that the literary work may [fol. 47-o] be a heavy dictionary that might be used for some utilitarian purpose, such as a high chair for a child at dinner, or a doorstep, or for some other practical value as an object. We will register the literary aspects of that work, the intangible literary aspects, and we feel that in the case of works of art we are again registering and recognizing the artistic aspects of the work, quite apart from what other utilitarian uses might be made of that work.

Q. Is the practice of the Copyright Office the same with respect to Class H registration as it is with respect to Class G?

A. The principles the Copyright Office follows are the same. It will be noted that Class G is the first and basic classification dealing with works of art, and also models or designs for works of art. Class H is the class dealing with reproductions of works of art.

The policies and practices followed by the office in determining whether the work is a work of art are the same in both instances. It is immaterial whether the work is an original work of art or a model or a reproduction of a work of art. It is a matter of historical accident that these different types of artistic work are not included within the same classification, and as a matter of fact, applicants freely select between the two classes and I recall of no cases where an exception has been taken by this office because of any question as to whether the particular work was appropriately classified under G or H.

31

PLAINTIFF'S EXHIBIT NO. "1"

PLAINTIFF'S EXHIBIT NO. "1"

CASE NO. 58796 civil

ADMITTED IN EVIDENCE

CERTIFICATE OF REGISTRATION

OF A CLAIM TO COPYRIGHT IN A REPRODUCTION
OF A WORK OF ART

REGISTRATION NO.

CCH

1723

CLASS

H

REPRODUCTION OF A
WORK OF ART

FORM H

THIS IS TO CERTIFY that the following statements for the
work herein named have been made a part of the records
of the Copyright Office. In witness whereof the seal of the
Copyright Office is hereto affixed.

Sam B. Warner
Register of Copyrights
United States of America

COPYRIGHT CLAIMANT OR CLAIMANTS (Full NAMES and ADDRESSES):

Reglor Of California

732 So. Maple Ave., Montebello, Calif.

TITLE OF WORK CURVED BALLET DANCER - FEMALE

AUTHORS (The word "Author" includes an employer in the case of works made for hire).
Full name (including middle name) and pseudonym (if any):

(a) Author of the reproduction:

NAME Rena Evelyn Stein

CITIZENSHIP U.S.A.

(Give name of country)

DOMICILE 732 So. Maple Ave., Montebello, Calif.

(Address)

(b) Author of original work which has been reproduced:

NAME Rena Evelyn Stein

(First)

(Middle)

(Last)

PUBLISHER AND DATE:

(a) Published by Reglor of California at Montebello, Calif.

(Name)

(Place)

(b) Date first placed on sale, sold, or publicly distributed July 15, 1949

(Month, day, and year)

1. If PRODUCED OUTSIDE THE UNITED STATES by
lithographic or photoengraving process, state where

(Country)

2. SEND CERTIFICATE, REFUND (IF ANY), AND OTHER
COMMUNICATIONS TO:

NAME Reglor Of California

ADDRESS 732 So. Maple Ave.
Montebello, Calif.

(City)

(Zone)

(State)

DATES OF RECEIPT IN COPYRIGHT OFFICE

APPLICATION

Sep. 19, 1950

ONE COPY

TWO COPIES

Oct. 2, 1950

POOR COPY

INSTRUCTIONS FOR SECURING REGISTRATION OF COPYRIGHT IN A REPRODUCTION OF A WORK OF ART

Registration may be secured for a reproduction of a work of art after it has been published with notice of copyright, which may consist of the word "Copyright" or the abbreviation "Copr." or the symbol ©, accompanied in either case by the name of the copyright proprietor. The symbol © may be accompanied merely by the initials, monogram, mark, or symbol of the copyright proprietor, provided that on some accessible portion of the copies or of the margin, back, permanent name, or pedestal, or of the substance on which such copies shall be mounted, his name shall appear.

The "date of publication" in the case of a work of which copies are reproduced for sale or public distribution is defined in the Copyright Act as "the earliest date when copies of the first authorized edition were placed on sale, sold, or publicly distributed by the proprietor of the copyright or under his authority". The Act provides that promptly after such publication with notice there shall be deposited in the Copyright Office two complete copies of the best edition thereof then published,

which should be accompanied by an application on Form H and statutory fee of \$4 for registration and certificate. For the purpose of identification, each copy deposited in the Copyright Office should bear a title which should correspond with the title given in the application for registration.

The term "Reproduction of a Work of Art," refers to a reproduction of an existing work presented in a different medium, such as an engraving of a painting. In filling out the application for registration, the citizenship of the reproducer should be given in space 3, rather than that of the original artist. The Act provides that the word "author" shall include an employer in the case of works made for hire.

The first term of copyright is 28 years, which is computed in the case of a work published in the first instance from the date of publication. In the twenty-eighth year a renewal application (Form R furnished upon request) may be made to secure a second term of 28 years.

★ ★ ★ ★

If you desire information or application forms (supplied free) for any class of work listed below, please advise which:

CLASS A—Books published in the United States (application Form A).

Books first published in a foreign country (application Form A Foreign).

CLASS B—Periodicals (application Form B).

Contributions to periodicals (application Form B5).

CLASS C—Lectures, sermons, addresses, prepared for oral delivery (application Form C).

CLASS D—Dramatic or dramatic-musical compositions (application Form D).

CLASS E—Musical compositions (application Form E).

CLASS F—Maps (application Form F).

CLASS G—Works of art; models or designs for works of art (application Form G).

CLASS H—Reproductions of a work of art (application Form H).

CLASS I—Drawings or plastic works of a scientific or technical character (application Form I).

CLASS J—Photographs (application Form J).

CLASS K—Prints and pictorial illustrations (application Form K).

Prints or labels used for articles of merchandise (application Form KK).

CLASS L—Motion-picture photoplays (application Form L).

CLASS M—Motion pictures other than photoplays (application Form M).

U. S. GOVERNMENT PRINTING OFFICE

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PLAINTIFF'S: PLAINTIFF'S EXHIBIT NO. "2"

33

CASE NO. 5879 Civil

ADMITTED IN EVIDENCE NOV 20 1952

CERTIFICATE OF REGISTRATION

OF A CLAIM TO COPYRIGHT IN A REPRODUCTION
OF A WORK OF ART

REGISTRATION NO.

60H

1721

CLASS

H

REPRODUCTION OF A
WORK OF ART FORM H

THIS IS TO CERTIFY that the following statements for the work herein named have been made a part of the records of the Copyright Office. In witness whereof the seal of the Copyright Office is hereto affixed.

Sam B. Warner
Register of Copyrights
United States of America

1. COPYRIGHT CLAIMANT OR CLAIMANTS (Full NAMES and ADDRESSES):

Reglor Of California

732 So. Maple Ave., Montebello, Calif.

2. TITLE OF WORK CURVED BALLET DANCER - MALE

3. AUTHORS (The word "Author" includes an employer in the case of works made for hire). Full name (including middle name) and pseudonym (if any):

(a) Author of the reproduction:

NAME Rena Evelyn Stein

CITIZENSHIP U.S.A.

(First) (Middle) (Last)

(Give name of country)

DOMICILE 732 So. Maple Ave., Montebello, Calif.

(Address)

(b) Author of original work which has been reproduced:

NAME Rena Evelyn Stein

(First) (Middle) (Last)

4. PUBLISHER AND DATE:

(a) Published by Reglor of California

at Montebello, Calif.

(Name)

(Place)

(b) Date first placed on sale, sold, or publicly distributed July 15, 1949

(Month, day, and year)

5. IF PRODUCED OUTSIDE THE UNITED STATES by

lithographic or photoengraving process, state where

(Country)

6. SEND CERTIFICATE, REFUND (IF ANY), AND OTHER COMMUNICATIONS TO:

NAME Reglor Of California

ADDRESS 732 So. Maple Ave.

(Number and Street)
Montebello, Calif.

(City)

(Zone)

(State)

DATES OF RECEIPT IN COPYRIGHT OFFICE

APPLICATION

Sep. 18, 1950

ONE COPY

TWO COPIES

Oct. 2, 1950

47r

POOR COPY

BLEED THROUGH

PLAINTIFF'S EXHIBIT NO. "3"

Additional Certificate (17 U.S.C. 215)

CERTIFICATE OF REGISTRATION

OF A CLAIM TO COPYRIGHT IN A REPRODUCTION

OF A WORK OF ART

REGISTRATION NO.

CLASS

H 1717

H

THIS IS TO CERTIFY that the following statements for the work herein named have been made a part of the records of the Copyright Office. In witness whereof the seal of the Copyright Office is hereto affixed.

SE NO. 58796 int. Register of Copyrights United States of AmericaDATED IN EVIDENCE NOV 20 1952

1. COPYRIGHT CLAIMANT OR CLAIMANTS (Full NAMES and ADDRESSES):

Reglor of California732 South Maple Avenue, Montebello, Calif.2. TITLE OF WORK CURVED DANCERS WITH TEXTURED CLOTHES - FEMALE FULL FIGURE

3. AUTHORS (The word "author" includes an employer in the case of works made for hire). Full name and pseudonym, if any, are requested for cataloging purposes. Citizenship must be given.

(a) Author of the reproduction:

Name Rena Evelyn Stein Citizenship U.S.A.

(First)

(Middle)

(Last)

(Give name of country)

Domicile 732 South Maple Avenue, Montebello, Calif.

(Address)

(b) Author of original work which has been reproduced:

Name Rena Evelyn Stein

(First)

(Middle)

(Last)

4. PUBLISHER AND DATE:

(a) Published by Reglor of California at Montebello, Calif.

(Name)

(Place)

(b) Date first placed on sale, sold, or publicly distributed July 10, 1950

(Month, day, and year)

5. IF PRODUCED OUTSIDE OF THE UNITED STATES by lithographic or photoengraving process

(see Section 16 of Title 17 of the United States Code)

state where _____

(Country)

6. SEND CERTIFICATE TO: (If refund or other communications are to be sent to another person, give his name in space 7.)

Name Reglor of CaliforniaAddress 732 South Maple Avenue

(Number and street)

Montebello, Calif.

(City)

(Zone)

(State)

7. Name _____ Address _____ 47s=47t

DATES OF RECEIPT IN COPYRIGHT OFFICE	
APPLICATION	Sept 18, 1950
ONE COPY	
TWO COPIES	Oct 2, 1950
FEE	\$4. 63464 Sept 18, 1950

16-43800-1

58196 2007

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PLAINTIFF'S EXHIBIT NO. "4"

Additional Certificate (17 U.S.C. 215)

CERTIFICATE OF REGISTRATION
OF A CLAIM TO COPYRIGHT IN A REPRODUCTION
OF A WORK OF ART

REGISTRATION NO.

CLASS

H 1724

H

THIS IS TO CERTIFY that the following statements for the work herein named have been made a part of the records of the Copyright Office. In witness whereof the seal of the Copyright Office is hereto affixed.

Register of Copyrights
 United States of America

1. COPYRIGHT CLAIMANT OR CLAIMANTS (Full NAMES and ADDRESSES):

Reglor of California

732 South Maple Avenue, Montebello, Calif.

2. TITLE OF WORK CURVED DANCER WITH TEXTURED CLOTHES - MALE FULL FIGURE

3. AUTHORS (The word "author" includes an employer in the case of works made for hire). Full name and pseudonym, if any, are requested for cataloging purposes. Citizenship must be given.

(a) Author of the reproduction:

Name Rena Evelyn Stein Citizenship U.S.A.
 (First) (Middle) (Last) (Give name of country)

Domicile 732 South Maple Avenue, Montebello, Calif.
 (Address)

(b) Author of original work which has been reproduced:

Name Rena Evelyn Stein
 (First) (Middle) (Last)

PUBLISHER AND DATE:

(a) Published by Reglor of California at Montebello, Calif.
 (Name) (Place)

(b) Date first placed on sale, sold, or publicly distributed July 10, 1950
 (Month, day, and year)

5. IF PRODUCED OUTSIDE OF THE UNITED STATES by lithographic or photoengraving process

(see Section 16 of Title 17 of the United States Code)

state where _____
 (Country)

6. SEND CERTIFICATE TO: (If refund or other communications are to be sent to another person, give his name in space 7.)

Name Reglor of California

Address 732 South Maple Avenue
Montebello, Calif.
 (Number and street) (City) (Zone) (State)

7. Name _____ Address _____ 47u=47v

DATES OF RECEIPT IN COPYRIGHT OFFICE	
APPLICATION	Sept 18, 1950
ONE COPY	
TWO COPIES	Oct 2, 1950
FEE	\$4. 63464 Sept 18, 1950

18-50800-1

NOV 20 1952
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PLAINTIFF'S EXHIBIT NO. "5"

CASE NO. 5879 Civil.ADMITTED IN EVIDENCE NOV 20 1952

CERTIFICATE OF REGISTRATION

OF A CLAIM TO COPYRIGHT IN A REPRODUCTION
OF A WORK OF ART

REGISTRATION NO.

CLASS

CCH

1738

H

REPRODUCTION OF A
WORK OF ART FORM H

THIS IS TO CERTIFY that the following statements for the work herein named have been made a part of the records of the Copyright Office. In witness whereof the seal of the Copyright Office is hereto affixed.

Sam B. Warner
Registrar of Copyrights
United States of America

1. COPYRIGHT CLAIMANT OR CLAIMANTS (Full NAMES and ADDRESSES):

Reglor of California

732 South Maple Avenue, Montebello, California

2. TITLE OF WORK

EGYPTIAN DANCER FEMALE

3. AUTHORS (The word "Author" includes an employer in the case of works made for hire). Full name (including middle name) and pseudonym (if any):

(a) Author of the reproduction:

NAME ^(First) ^(Middle) ^(Last) Evelyn Stein

CITIZENSHIP

U. S. A.

(Give name of country)

DOMICILE ^(Street) ^(City) ^(State) 732 South Maple Avenue, Montebello, California

(b) Author of original work which has been reproduced:

NAME ^(First) ^(Middle) ^(Last) Evelyn Stein

4. PUBLISHER AND DATE:

(a) Published by Reglor of California

732 South Maple Avenue

(b) Date first placed on sale, sold, or publicly distributed

at

January 25, 1950 (Place)

(Month, day, and year)

5. IF PRODUCED OUTSIDE THE UNITED STATES by lithographic or photoengraving process, state where

(Country)

6. SEND CERTIFICATE, REFUND (IF ANY), AND OTHER COMMUNICATIONS TO:

NAME Reglor of CaliforniaADDRESS 732 South Maple Avenue

(Number and Street)

Montebello, California

(City)

(Zone)

(State)

DATES OF RECEIPT IN COPYRIGHT OFFICE

APPLICATION

September 18, 1950

ONE COPY

1950 October 2, 1950

1 e. October 19, 1950

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PLAINTIFF'S

CASE NO.

5879 Civil.

ADMITTED IN EVIDENCE NOV 20 1952

CERTIFICATE OF REGISTRATION

OF A CLAIM TO COPYRIGHT IN A REPRODUCTION
OF A WORK OF ART

REGISTRATION NO.

cdh

1737

CLASS

H

REPRODUCTION OF A
WORK OF ART

FORM #

THIS IS TO CERTIFY that the following statements for the work herein named have been made a part of the records of the Copyright Office. In witness whereof the seal of the Copyright Office is hereto affixed.

Sam B. Warner
Registrar of Copyrights
United States of America

1. COPYRIGHT CLAIMANT OR CLAIMANTS (Full NAMES and ADDRESSES):

Reglor of California

732 South Maple Avenue, Montebello, California

2. TITLE OF WORK

EGYPTIAN DANCER MALE

3. AUTHORS (The word "Author" includes an employer in the case of works made for hire). Full name (including middle name) and pseudonym (if any):

(a) Author of the reproduction:

NAME Rena Evelyn Stein CITIZENSHIP U. S. A.
(First) (Middle) (Last) (Give name of country)

DOMICILE 732 South Maple Avenue, Montebello, California
(Address)

(b) Author of original work which has been reproduced:

NAME Rena Evelyn Stein
(First) (Middle) (Last)

4. PUBLISHER AND DATE:

(a) Published by Reglor of California at 732 South Maple Avenue
(Name) (Address)

(b) Date first placed on sale, sold, or publicly distributed January 25, 1950
(Month, day, and year)

5. IF PRODUCED OUTSIDE THE UNITED STATES by lithographic or photoengraving process, state where

(Country)

6. SEND CERTIFICATE, REFUND (IF ANY), AND OTHER COMMUNICATIONS TO:

NAME Reglor of CaliforniaADDRESS 732 South Maple AvenueMontebello, California

(City)

(Name)

(State)

DATES OF RECEIPT IN COPYRIGHT OFFICE	
APPLICATION	September 18, 1950
ONE COPY	
COPY 2, 1950 1c October 11, 1950 1c	

[fol. 47-y] PLAINTIFF'S EXHIBIT No. 7

Case No. 5879 Civil

Admitted in Evidence Nov. 20, 1952

REGULATIONS OF THE COPYRIGHT OFFICE

CODE OF FEDERAL REGULATIONS

Title 37—Patents, Trade-marks and Copyrights

Chapter II—Copyright Office, Library of Congress

[fol. 47-z] § 202.8. *Works of art (Class G)*—(a) *In general.* This class includes works of artistic craftsmanship, in so far as their form but not their mechanical or utilitarian aspects are concerned, such as artistic jewelry, enamels, glassware, and tapestries, as well as all works belonging to the fine arts, such as paintings, drawings and sculpture. Works of art and models or designs for works of art are registered in Class G on Form G, except published three-dimensional works of art which require Form GG.

(Here follow 3 photolithographs, side folios 47aa, 47bb-
47dd, 47ee)

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CASE NO. 58796 mil

ADMITTED IN EVIDENCE NOV 20 1952

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7 6.95		Style #963 Egyptian Male Ht.30" 19.95		Style #969 Carved Free Form Ht.33" 17.95	
8 6.95		Style #964 Television Ht.16" 9.25		Style #970 New Winding Ribbon Ht.39" 14.95	
9 16.95		Style #965 Headboard Ht.18" 13.95		Style #971 Loving Drape Ht.37" 17.95	
0 et 6.95		Style #966 String Free Ht.33" 16.95		Style #972 Curved Floral Ht.29" 18.95	

47bb=47dd



PLAINTIFF'S EXHIBIT NO. "15"

Case No. 5879 Civil.

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[fol. 47ff] DEFENDANT'S EXHIBIT No. 2

UNITED STATES DISTRICT COURT, DISTRICT OF MARYLAND

Civil Action No. 5879

B. STEIN, et al.,

v.

E. L. MAZER, et al.

Representative Group of Design Patents

May 6, 1952

L. BENIGNI

Des. 166,656

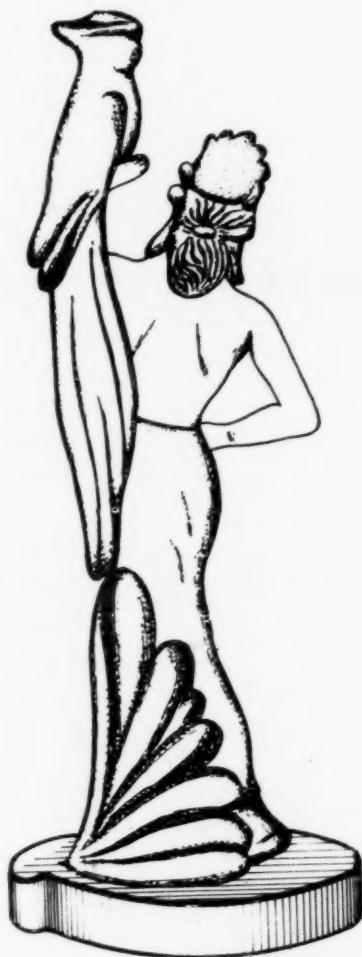
LAMP BASE

Filed Feb. 4, 1952

Fig. 1



Fig. 2



INVENTOR.
Louis Benigni,
BY *Mildred Oncken*

Patented May 6, 1952

Des. 166,656

UNITED STATES PATENT OFFICE

166,656

LAMP BASE

Louis Benigni, Chicago, Ill.

Application February 4, 1952, Serial No. 18,377

Term of patent 7 years

(Cl. D48—20)

To all whom it may concern:

Be it known that I, Louis Benigni, a citizen of the United States, residing at Chicago, in the county of Cook and State of Illinois, have invented a new, original, and ornamental Design for a Lamp Base, of which the following is a specification, reference being had to the accompanying drawing, forming a part hereof.

In the drawing:

Fig. 1 is a front perspective view of a lamp base, showing my new design; and

Fig. 2 is a rear perspective view thereof.

I claim:

The ornamental design for a lamp base, substantially as shown.

LOUIS BENIGNI.

No references cited.

Nov. 15, 1949

R. SOLOFF ET AL

Des. 156,050

LAMP BASE

Filed March 22, 1949

45



FIG. 1.



FIG. 2.

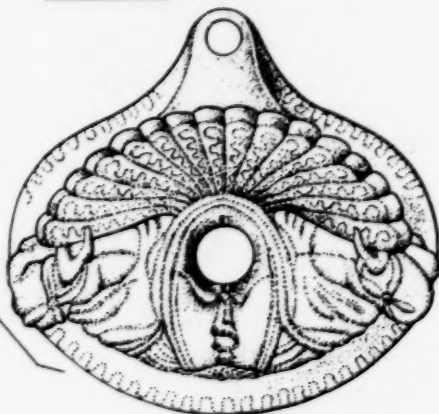
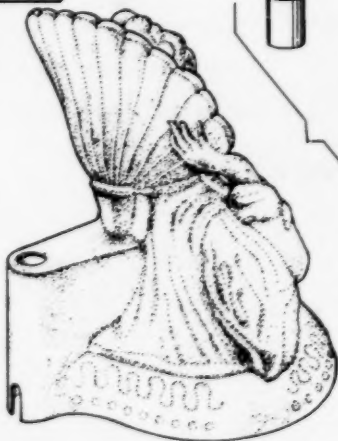


FIG. 3.



INVENTOR.
ROBERT SOLOFF
MORRIS N. NAUMOFF
BY Ostrolenk + Faber
ATTORNEYS

POOR COPY

FILED THROUGH

Patented Nov. 15, 1949

Des. 156,050

UNITED STATES PATENT OFFICE

156,050

DESIGN FOR A LAMP BASE

Robert Soloff, Forest Hills, N. Y., and Morris M. Naumoff, Greensburg, Pa., assignors, by mesne assignments, to Keg-o Products Corp., New York, N. Y., a corporation of New York

Application March 22, 1949, Serial No. 1,542

Term of patent 7 years

(Cl. D48—20)

To all whom it may concern:

Be it known that we, Robert Soloff and Morris M. Naumoff, citizens of the United States, residing at Forest Hills, in the county of Queens and State of New York, and Greensburg, in the county of Westmoreland and State of Pennsylvania, have invented a new, original, and ornamental Design for a Lamp Base, of which the following is a specification, reference being had to the accompanying drawing, forming a part thereof.

Figure 1 is a front perspective view of a lamp base, showing our new design.

Figure 2 is a top plan view thereof with the central part removed; and

Figure 3 is a rear perspective view.

We claim:

The ornamental design for a lamp base, as shown.

ROBERT SOLOFF.
MORRIS M. NAUMOFF.

REFERENCES CITED

The following references are of record in the file of this patent:

UNITED STATES PATENTS

Number	Name	Date
D. 143,232	Miller	Dec. 18, 1945
D. 154,145	Rosner	June 14, 1949

OTHER REFERENCES

Pottery and Porcelain, vol. I, 1944, page 63, Figure #132.

June 17, 1952

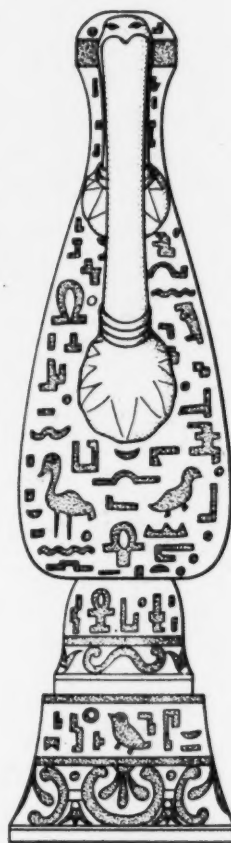
L. A. ARDITTI

Des. 167,018

LAMP BASE OR LIKE ARTICLE

Filed Jan. 24, 1952

2 SHEETS—SHEET 1

FIG. 1FIG. 2

INVENTOR.

LEON A. ARDITTI

June 17, 1952

L. A. ARDITTI

Des. 167,018

LAMP BASE OR LIKE ARTICLE

Filed Jan. 24, 1952

2 SHEETS—SHEET 2



FIG. 3

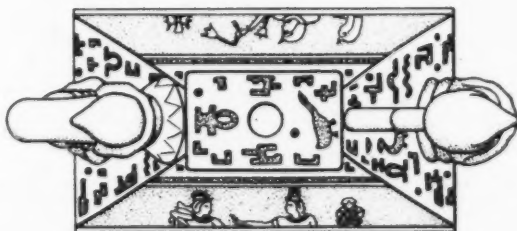


FIG. 4

INVENTOR.
LEON A. ARDITTI

Patented June 17, 1952

Des. 167,018

UNITED STATES PATENT OFFICE

167,018

LAMP BASE OR LIKE ARTICLE

Leon A. Arditti, New York, N. Y.

Application January 24, 1952, Serial No. 18,209

Term of patent 7 years

(Cl. D48—20)

To all whom it may concern:

Be it known that I, Leon A. Arditti, a citizen of the United States of America, and residing in the city, county and State of New York, have invented a new, original, and ornamental Design for a Lamp Base or like article, of which the following is a specification, reference being made to the accompanying drawing, forming part thereof.

Fig. 1 is a front elevational view of a lamp base or like article, showing my new design;

Fig. 2 is an end elevational view looking at the right of Fig. 1;

Fig. 3 is a rear elevational view; and

Fig. 4 is a top plan view.

I claim:

The ornamental design for a lamp base or like article, substantially as shown.

LEON A. ARDITTI.

No references cited.

July 1, 1952

D. BOROWITZ
ELECTRIC LAMP BASE
Filed May 6, 1952

Des. 167,133

50.



Fig. 1

Fig. 2



Fig. 4

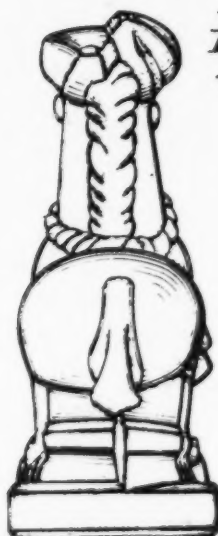


Fig. 3



INVENTOR.
DAVID BOROWITZ
BY *Morris Spector*
Atty.

Patented July 1, 1952

Des. 167,133

UNITED STATES PATENT OFFICE

167,133

ELECTRIC LAMP BASE

David Borowitz, Chicago, Ill., assignor to Bradley
Manufacturing Company, Chicago, Ill., a cor-
poration of Illinois

Application May 6, 1952, Serial No. 19,617

Term of patent $3\frac{1}{2}$ years

(Cl. D48—20)

To all whom it may concern:

Be it known that I, David Borowitz, a citizen of the United States, and a resident of Chicago, Illinois, have invented a new, original, and ornamental Design for an Electric Lamp Base, of which the following is a specification, reference being had to the accompanying drawing, forming a part thereof.

Figure 1 is a side elevational view of an electric lamp base, embodying my new design.

Figure 2 is a front elevational view thereof, the broken lines indicating a standard and socket being omitted for convenience and illustration;

Figure 3 is a side elevational view thereof showing the side opposite Figure 1, the broken lines indicating a standard and socket being omitted for convenience of illustration; and

Figure 4 is a rear elevational view thereof, the broken lines indicating a standard and socket

being omitted for convenience of illustration.

The dominant features of my present design lie in the portions shown in full lines.

I claim:

The ornamental design for an electric lamp base, substantially as shown and described.

DAVID BOROWITZ.

REFERENCES CITED

The following references are of record in the file of this patent:

UNITED STATES PATENTS

Number	Name	Date
D. 150,468	Sebel	Aug. 3, 1948

OTHER REFERENCES

Gift and Art Buyer, January 1945, page 127.

Nov. 22, 1949

T. ESTELLA

Des. 156,081

TABLE LAMP

Filed Oct. 15, 1948

2 Sheets-Sheet 1

Fig. 1

52.



INVENTOR
THOMAS ESTELLA
BY. *Nicholas J. Garofalo*
ATTORNEY

Nov. 22, 1949

T. ESTELLA

Des. 156,081

TABLE LAMP

Filed Oct. 15, 1948

2 Sheets-Sheet 2

Fig. 2

53



INVENTOR.
THOMAS ESTELLA
BY. *Nicholas J. Gangale*
ATTORNEY

Patented Nov. 22, 1949

Des. 156,081

UNITED STATES PATENT OFFICE

156,081

DESIGN FOR A TABLE LAMP

Thomas Estella, Long Island City, N. Y.

Application October 15, 1948, Serial No. 149,127

Term of patent 7 years

(Cl. D48—20)

To all whom it may concern:

Be it known that I, Thomas Estella, a citizen of the United States, residing at 21—14 25th Street, Long Island City, county of Queens, New York, have invented a new, original, and ornamental Design for a Table Lamp, of which the following is a specification, reference being had to the accompanying drawings, forming a part thereof.

Fig. 1 is a front view of a table lamp showing my new design, and

Fig. 2 is a rear view thereof.

I claim:

The ornamental design for a table lamp, substantially as shown.

THOMAS ESTELLA.

REFERENCES CITED

The following references are of record in the file of this patent:

Webster's Collegiate Dictionary, 1940, p. 729, illustration, lower right.

Nov. 23, 1948.

R. E. GIFFORD

Des. 151,817

PLANTER LAMP

Filed June 20, 1947

55.

Fig-1

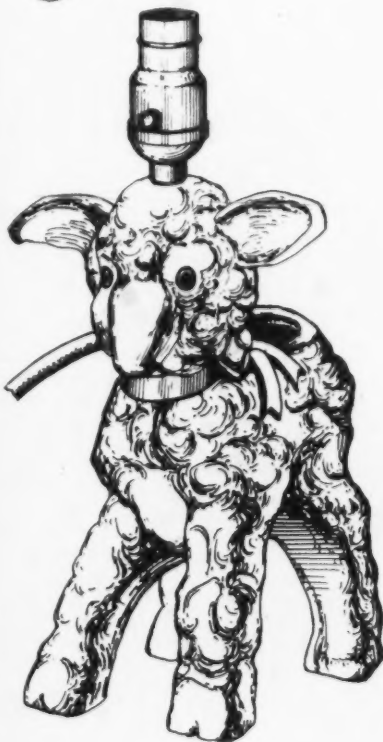


Fig-2



Inventor
Robert E. Gifford
By
Raymond W. Schuur

Att'y.

Patented Nov. 23, 1948

Des. 151,817

56

UNITED STATES PATENT OFFICE

151,817

DESIGN FOR A PLANTER LAMP

Robert E. Gifford, Farnsworth, Ill.

Application June 20, 1947, Serial No. 139,837

Term of patent $3\frac{1}{2}$ years

(Cl. D48—20)

To all whom it may concern:

Be it known that I, Robert E. Gifford, a citizen of the United States of America, residing at Farnsworth, Great Lakes Naval Reservation, in the county of Lake and State of Illinois, have invented a new, original, and ornamental Design for Planter Lamp, of which the following is a specification, reference being had to the accompanying drawing, forming a part thereof.

Referring to the drawing;

Figure 1 is a three-quarter front view in perspective, showing my new design; and

Figure 2 is a similar rear view in perspective.

I claim:

The ornamental design for a planter lamp, as shown.

ROBERT E. GIFFORD.

REFERENCES CITED

The following references are of record in the file of this patent:

Royal Haeger Lamps, Cat. B, received June 9, 1941, p. 13, item 4115.

Gift and Art Buyer, Oct. 1944, p. 101, see lamp, upper left.

Gift and Art Buyer, Jan. 1946, p. 114.

[fol. 164] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT
OF MARYLAND

No. 5879—Civil

BENJAMIN STEIN and RENA STEIN, dba REGLOR OF CALI-
FORNIA

vs.

EMANUEL L. MAZER and WILLIAM ENDICTER, dba JUNE LAMP
MANUFACTURING COMPANY

[fol. 165] OPINION—Filed February 20, 1953

COLEMAN, J.:

This proceeding is for alleged infringement of six copy-
rights for small three-dimensional statuettes of male and
female dancing figures made of semi-vitreous china, reg-
istration of which was granted to the plaintiffs by the Copy-
right Office.

The plaintiffs, husband and wife, are citizens of Cali-
fornia, doing business as partners, in Montebello, California,
under the name of Reglor of California, in the design and
casting of small statuary. The defendants are citizens of
Maryland and, as partners, do business under the name of
June Lamp Manufacturing Company, in Baltimore, as as-
semblers of table lamps which they sell, both wholesale and
retail, throughout the country.

Registration of the statuettes here in issue was applied
for and obtained by plaintiffs in 1950 under section 5(g),
Title 17, U.S.C.A., entitled "Copyrights—Classification of
work for Registration", which provides as follows: "The
application for registration shall specify to which of the
following classes the work in which copyright is claimed
belongs: * * * .

"Works of Art; Models of Design for Works of Art".
[fol. 166] As registered, all of the statuettes are of danc-
ers, male and female, purely ornamental and disclose no
lamp attachments, although, with very few exceptions, the
plaintiffs have never sold any of their statuettes other than

as complete table lamps, that is, with the statuette figure as the lamp base and the lighting parts fitted thereto,—the electric wiring, sockets, and lamp shades. Similarly, the defendants' statuettes which are alleged by plaintiffs to infringe their own statuettes and are of identical size, design and conformation, have always been sold by the defendants as table lamps, that is, with the electric wiring, sockets, and lamp shades included,—never merely as statuettes.

Plaintiffs contend that, in spite of the fact that, as registered in the Copyright Office, their statuettes disclose no lamp attachments, they, nevertheless, by such registration, have obtained the right to exclude anyone from manufacturing or selling statuettes of the same form and design, regardless of the fact that they may be converted, as defendants have converted their identical statuettes, to a utilitarian purpose, namely, to electric table lamps.

Defendants deny that plaintiffs' copyrights give them any such monopoly, since the registration of the copyrights for plaintiffs' statuettes was secured for them as "works [fol. 167] of art" under the copyright laws, whereas the statuettes that they sell are not "works of art" as defined in these laws, but are articles of manufacture for utilitarian purposes and, if entitled to protection, such is to be obtained not under the copyright but under the patent laws.

We have already quoted the pertinent provision of the copyright laws under which plaintiffs obtained their copyrights. In furtherance of this provision, the Copyright Office has adopted the following regulation (Regulation 20.8, 17 C.F.R., Chapter II, 202.8; 17 U.S.C.A. foll. sec. 207): "Works of Art (Class G—(a) General. This class includes works of artistic craftsmanship, insofar as their form *but not their mechanical or utilitarian aspects are concerned*, such as artistic jewelry, enamels, glassware, and tapestries, as well as all works belonging to the fine arts, such as paintings, drawings *and sculpture*. Works of art and models of designs for works of art are registered in Class G on Form G, except published three-dimensional works of art which require Form GG." (Emphasis supplied). Previous regulations going back for a number of years were to the same effect, with only some variation in phraseology.

The Copyright Office, under the jurisdiction of the Lib-

rary of Congress, upon the filing of an application for copyright registration and the payment of the requisite filing [fol. 168] fee, issues a certificate of copyright, provided the application is found to fall within one of the classes for which the copyright law provides, and meets the regulations of the Copyright Office promulgated with relation thereto. Thus, the issuance of the certificate of copyright is a perfunctory matter. The Copyright Office conducts no examination to determine the existence of novelty or invention in the subject matter. The certificate, when issued, is effective for a term of 28 years and may be renewed perfunctorily for another like term.

Under the patent laws (Sections 4929 and 4933 of the Revised Statutes, 35 U.S.C.A., Sec. 73 (n), provision is made for design patents, as follows: "Any person who has invented any new, original, and ornamental design for an article of manufacture, not known or used by others in this country before his invention thereof and not patented or described in any printed publication in this or any foreign country before his invention thereof, or more than one year prior to his application thereof and not in public use or on sale in this country for more than one year prior to his application, unless the same is proved to have been abandoned, may * * * obtain a patent therefor.

"All the regulations and provisions which apply to ob-[fol. 169] taining or protecting patents for inventions or discoveries not inconsistent with the provision of this title, shall apply to patents for *designs*." (Emphasis supplied).

The section of the patent laws that deals with infringement of design patents provides as follows (35 U.S.C.A. Sec. 74): "During the term of *letters patent for a design*, it shall be unlawful for any person other than the owner of said letters patent, without a license of such owner, to apply the design secured by such letters patent, or any colorable imitation thereof, to any article of manufacture for the purpose of sale, or to sell or expose for sale any article of manufacture to which such design or colorable imitation shall, without the license of the owner, have been applied, knowing that the same has been so applied * * *." (Emphasis supplied).

Design patents have been provided for by Acts of Con-

gress since 1842, when the first design patent Act was passed, and a great many design patents on articles of manufacture have been granted throughout the years. See *Gorham vs. White*, 81 U. S. 511; *Glen Raven Knitting Mills vs. Fanson Hosiery Mills*, 189 F. (2d) 845. Briefly summarized, the procedure in the Patent Office with respect to design patents, is that, upon the filing of an application for [fol. 170] such a patent, including a drawing of the design, a description thereof and claim therefor, the Patent Office conducts a critical examination of the pertinent prior art on record in the Patent Office to determine whether the design is new, original, and ornamental, and possesses the quality of invention. If these requirements are met, the Patent Office then may issue a patent for the design for a term of either 3½, 7 or 14 years, at the applicant's election, with a sliding scale of fees. 35 U.S.C.A. Secs. 77, 78. Design patents are not renewable. The designs become public property when the patents for them expire.

It is readily apparent from a comparison of the foregoing provisions of the copyright laws relative to "Works of Art" with those of the patent laws relative to ornamental design for articles of manufacture, that there is a distinct difference between what is contemplated by these separate laws. And so it has been stated in numerous decisions. See especially *Lithographic Co. v. Sarony*, 111 U.S. 53; *Taylor Instrument Company vs. Fawley-Brost Co.*, 139 F. (2d) 98, cert. den. 321 U.S. 785.

It is unfortunately true that the Supreme Court has never squarely ruled upon this distinction, as applied to facts such as exist in the case before us. However, in [fol. 171] *Stein vs. Expert Lamp Company*, 188 F. (2d) 611, a decision of the Court of Appeals for the Seventh Circuit, rendered in 1951, where the plaintiffs were the same as in the present case, the distinction between the scope of the copyright and the patent laws was recognized. There, these same plaintiffs sued the Expert Lamp Company for infringement of statuettes very similar to those here involved. The District Court dismissed the complaint (96 F. Supp. 97), holding that the plaintiffs' submission to the Copyright Office of the statuettes with so-called mounting stubs for electric lamp sockets was evidence of the practical use to which the statuettes were intended to be put, and that the

plaintiffs could not monopolize such use under the copyright statute. Plaintiffs petitioned the District Court to reconsider the case on the ground that their counsel had, entirely through inadvertence, mistakenly misinformed the Court in the course of the original hearing that the statuettes filed with the Copyright Office, on which registration was granted, embodied lamp mounting-stubs, which was not the case. This petition was denied on the ground that what it disclosed was "immaterial to the decision in this case."

On appeal the District Court was affirmed, rehearing was also denied and the Supreme Court denied certiorari. [fol. 172] 342 U.S. 829. The appellate court said (188 F. (2d) at 612-613): "In arguing for a reversal, plaintiffs make the point that the fact that the statuette may be utilized for some practicable use does not change the character of it. They insist that a sculptured statue is a 'work of art', and since statuary is registrable matter they are entitled to protection, and the copyrights must be enforced. On the other hand, defendants contend that plaintiffs' copyrights do not cover or protect an electric table lamp, and that the Copyright Office cannot grant a monopoly on such a device. In support of plaintiffs' contention they cite, among other cases, 23 S. Ct. 298, 47 L. Ed. 460; *Pelligrini v. Allegrini*, D.C., 2 F. 2d 610; and *United States v. Backer*, 2 Cir., 134 F. 2d 533. *We have examined and considered all the cases cited but are not persuaded that a design of an electric lamp may be protected as a monopoly by means of a copyright registration, registered without an examination as to originality, novelty or inventiveness.* (Emphasis supplied).

"Congress has provided two separate and distinct classes or fields of protection, the copyright and the patent. Copyright registrations are granted by filing with the Copyright Office two reproductions of the 'work of art' with [fol. 173] copyright notice and a fee of \$4.00. The Copyright Office makes no examination or search as to the originality or novelty of the claimed 'work of art'. Applications for design patents are filed in the United States Patent Office and are subject to an examination in which the examiner searches through all available publications, prior patents and all prior art available, to determine if the

design possesses the qualities requisite to granting a design patent.

"It is true that the Copyright Act protects 'Works of Art; models or designs for works of art', but the Act does not refer to articles of manufacture having a utilitarian purpose nor does it provide for a previous examination by a proper tribunal as to the originality of the matter offered for copyright * * *."

Following the Appellate Court's opinion, the case again came before the District Court on the matter of assessment of attorneys' fees and costs, pursuant to the copyright statute (17 U.S.C.A. Sec. 116), and in a memorandum opinion (unreported) the District Judge said: "The pertinent feature compelling the Court to make the decision of January 23, 1951, was the submission to the Copyright Office of plaintiffs' statuette 'having the threaded mounting stub to receive a lamp socket.' This technicality and the [fol. 174] interpretation accorded the copyright statute defeated the plaintiffs' claim."

Plaintiffs, in the present suit, would have us hold that in the Expert Lamp Company case the Court of Appeals did no more than affirm the above quoted narrow interpretation by the District Court of its own holding, and that as a result we should rule in plaintiffs' favor in the present case, since registration of all the copyrights involved in the present case was granted upon specimen statuettes deposited with the Copyright Office which were without any lamp attachments. Suffice it to say that we find this reasoning to be entirely without merit. To follow it would be to torture the very language of the appellate court's opinion which we have above quoted, especially the statement (188 F. (2d) 611, at 612) that "We have examined and considered all the cases cited *but are not persuaded that a design of an electric lamp may be protected as a monopoly by means of a copyright registration, registered without an examination as to originality, novelty or inventiveness.*" (Emphasis supplied). We interpret the phrase in the foregoing, "by means of a copyright registration", as intended to be read as "by means of *any* copyright registration".

[fol. 175] Thus believing that the Seventh Circuit Court of Appeals is correct in its reasoning and conclusions, its

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decision should be followed in the present case. In fact, contrary to the contention made by counsel for plaintiffs, that decision is consistent with the long-established practice of the Copyright Office in granting copyrights for artistic lamps of various sorts. The testimony of the present Register of Copyrights was that the provision in section 202.8 of the Copyright Office Regulations, which we have above quoted, that Class (G)—(a) “General Works of Art” include “works of artistic craftsmanship, insofar as their form but not their mechanical or utilitarian aspects are concerned”, is interpreted by the Copyright Office and by its examiners “to permit them to deal only with the question of whether the work is a work of artistic craftsmanship, and to consider as immaterial whether the work may also have a mechanical or utilitarian aspect.” The Register explained that the 1909 amendments to the Copyright Laws changed the specification of “works of the fine arts” to the broader term, “works of art” because Congress wanted to include some subject matter, as for instance, that of applied design, not yet within the province of design patents, but believed to be entitled to copyright protection; and that [fol. 176] following this change in the law, the practice developed in the Copyright Office of registering works of art which were determined to be such, even if not works of *fine* art in the strict sense, and even if they had a utilitarian aspect; and that thus, by issuing a certificate of registration the Office purported to give applicant *no* rights so far as any mechanical or utilitarian purpose is concerned.

Counsel for plaintiffs rely upon *Stein v. Rosenthal*, 103 F. Supp. 227, a decision of the District Court for the Southern District of California. There, the same plaintiffs as those before us sued a citizen of California for infringement of four of the same copyrights here in suit. The Court held there was infringement. We quote at some length the following from the Court’s opinion (103 F. Supp. 227, at 229-231): “An Opinion is indicated because contentions have been made that the copyrights involved in this case are invalid for the same reasons which voided the same plaintiffs’ copyrights of similar subject matter in *Stein v. Expert Lamp Co.*, 7 Cir., 1951, 188 F. 2d 611, Id., D.C., 96 F. Supp. 97. There are points of similarity and also points

of dissimilarity between the facts in this case and those in the cited case.

"Plaintiffs are copyright proprietors concerning four [fol. 177] copyrights for which the Register of Copyrights has issued certificates of registration in Class H, identified as Certificates 1721, 1723, 1737 and 1738. The certificates relate to statuettes or sculpture entitled Male and Female Curved Ballet Dancers; Egyptian Dancer, Male; and Egyptian Dancer, Female. Under the the partnership style Reglor of California, plaintiffs have reproduced and sold many copies in the form of statuettes, each one of which has been marked with the required statutory notice. A few copies of some of the statues were sold simply as statuettes. By far the greater number were wired with electrical assemblies to which lamp shades were attached and were sent to the retail market by plaintiffs as the supporting bases of fully assembled table lamps.

"The photographs of the statuettes deposited with the Copyright Office, as part of the claimed copyright in a reproduction of a work of art, are photographs of mere statues alone without electrical assemblies, lamp shades, lamp mounting stubs or any other addition to the purely artistic sculpture. Insofar as the copyright registration shows, the several works registered are statues only. There is no suggestion in any of the several claims to copyright of any claim except the form of the figures. There are no mechanical or utilitarian aspects to the statues. None of the [fol. 178] claims to copyright suggest any utilitarian use and if adaptability to such a purpose were to be sought solely from examination of the copyrighted material, the result would be negative.

* * * * *

"Plaintiff's copies of their protected statues, as used in their lamp business, differed from the copyrighted originals in that they were cast with electrical conduits and mounting stubs added to the sculpture. So were the copies cast for the defendants by Valentino Santi, the third party defendant. In this respect they materially differed from original statues submitted for the registration which had been perfected under Section 5 (g) of Title 17, United States Code

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Annotated. It is this difference which distinguishes this case from *Stein v. Expert Lamp Company*, 7 Cir., 1951, 188 F. 2d 611, Id., D. C., 96 F. Supp. 97. (Both Opinions should be read to get all of the facts). *But for* the addition of mounting stubs which adapted them to the lamp manufacturer's use, the infringing copies were identical with the non-utilitarian originals depicted on the registration certificates.

* * * * *

"We have been referred to the familiar rule that protection of productions of the industrial arts, utilitarian in purpose and character, even if artistically made or ornamented, [fol. 179] depends upon action under the Patent Law rather than the Copyright Act which gives protection to, Section 5 (g), 17 U.S.C.A., 'Works of art; models or designs for works of art'. This poses the question whether the registered sculpture is an article utilitarian in purpose and character. The Court holds that as registered, it is not. Each of the statuettes is mere art. It need not be fine art. The word 'fine' was stricken from the Act of March 4, 1909. *Jones Bros. Co. v. Underkoffler*, D. C., 16 F. Supp. 729. To be eligible it must be not utilitarian in itself. *Having qualified for registration by reason of its purely artistic character, the question presented is whether an intent on the part of the claimant to copy such protected sculpture in such a way as to artistically enhance some separate and utilitarian article of manufacture destroys the right to copyright. The argument that this is so is but another vehicle to carry defendants' philosophy that if the artist intends to profit by his creation he cannot acquire protection. To uphold this argument would be to require the Judicial inquiry to plumb the mind of every copyright proprietor and determine his plans and intentions as of the time of registration. This impossibility is not contemplated by the Statute.*

"It is recognized that copyright protection existing for original art does not extend to protecting a table lamp [fol. 180] which employs a copy of the protected art as part of its ornamentation. The copyright proprietor's right is limited to the right to make or use copies of the protected material. *Bleistein v. Donaldson Lithographing Co.*, 188

U.S. 239, 23 S. Ct. 298, 47 L. Ed. 460. *This protection is absolute and the copyrighted art under protection of valid copyrights cannot be copied for any purpose without consent of the proprietor. Thus when copied and used, as defendants have used it, in decoration of a utilitarian object, there is an infringement for which damages will be allowed for past infringing acts and injunctive relief issued against future like wrong.*" (Emphasis supplied).

The Rosenthal decision is now on appeal. We find unconvincing the District Court's reasoning in that case, including the interpretation given to the decision of the appellate court in *The Expert Lamp Company* case, whereby a basis for difference in conclusion is rested upon alleged important factual differences. Therefore, we are not disposed to follow the Rosenthal decision.

For the reasons herein given, the complaint must be dismissed.

[fol. 181] Reporter's Certificate to foregoing paper omitted in printing.

[fols. 182-190] IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

Civil Action No. 5879

BENJAMIN STEIN and RENA STEIN, doing business as REGIOR
OF CALIFORNIA, Plaintiffs,

vs.

EMANUEL L. MAZER and WILLIAM ENDICTER, doing business as
JUNE LAMP MANUFACTURING COMPANY, Defendants.

DECREE—Filed January 8, 1953

This case having been fully tried and heard before me on its merits, and in accordance with the Memorandum Opinion of this Court,

It is ordered, adjudged and decreed:

1. That, in accordance with the Courts oral opinion, the Complaint and Amended Complaint be, and it is hereby dismissed with prejudice.

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2. That Plaintiffs' Petition for Reconsideration be, and it is hereby denied,
3. That Defendants' request for attorneys' fees be, and it is hereby denied,
4. That the costs be, and they are hereby assessed against Plaintiffs.

William C. Coleman, Chief Judge, United States District Court. Approved as to Form—Will Freeman, George E. Frost, Attorneys for Plaintiffs, Max R. Kraus, Attorney for Defendants.

Date—January 8th, 1953.

(File endorsement omitted)

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[fol. 33] PROCEEDINGS IN THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

No. 6572

BENJAMIN STEIN and RENA STEIN, Doing Business as Reglor
of California, Appellants,

versus

EMANUEL L. MAZER and WILLIAM ENDICTER, Doing Business
as June Lamp Manufacturing Company, Appellees

Appeal From the United States District Court for the
District of Maryland, at Baltimore

February 24, 1953, record on appeal filed and cause
docketed.

Same day, original exhibits certified up.

Same day, appearance of Will Freeman, George E. Frost
and Joseph T. Brennan, 2d, entered for the appellants.

March 2, 1953, appearance of Max R. Kraus entered for
the appellees.

Same day, statement under section 3 of rule 10 filed.

March 17, 1953, brief and appendix of appellants filed.

March 24, 1953, petition of appellees for leave to file brief
in excess of 50 printed pages filed.

ORDER PERMITTING APPELLEES TO FILE BRIEF NOT EXCEEDING
65 PAGES—Filed March 26, 1953

(Style of Court and Title Omitted)

Upon the application of the Appellees, by their counsel,
and for good cause shown,

[fol. 34] Special permission is hereby granted Appellees
in the above entitled case to file brief in excess of 50 printed
pages, but not exceeding 65 printed pages.

March 25, 1953.

John J. Parker, Chief Judge, Fourth Circuit.

April 10, 1953, motion of Register of Copyrights for
leave to file brief as amicus curiae filed.

ORDER GRANTING LEAVE TO FILE BRIEF AS AMICUS CURIAE—
Filed and Entered April 10, 1953

(Style of Court and Title Omitted)

Upon the motion of the Register of Copyrights, and for good cause shown,

Leave is hereby granted said Register of Copyrights to file a brief as *amicus curiae* in the above entitled case.

April 10, 1953.

John J. Parker, Chief Judge, Fourth Circuit.

April 10, 1953, brief of Register of Copyrights as *amicus curiae* filed.

April 13, 1953, reply brief of appellants filed.

April 16, 1953, twenty-five printed copies of brief of Register of Copyrights as *amicus curiae* filed.

ARGUMENT OF CAUSE

April 17, 1953 (April term, 1953), cause came on to be heard before Parker, Chief Judge, and Soper and Dobie, Circuit Judges, and was argued by counsel and submitted.

April 27, 1953, motion of appellees for leave to file reply to *amicus curiae* brief filed.

[fol. 35] ORDER GRANTING APPELLEES LEAVE TO FILE REPLY
TO AMICUS CURIAE BRIEF—Filed April 27, 1953

(Style of Court and Title Omitted)

Upon the motion of the Appellees, by their counsel, and for good cause shown,

Leave is hereby granted the Appellees to file a reply to the *Amicus Curiae* Brief of Register of Copyrights filed in the above case on April 16, 1953.

April 25, 1953.

John J. Parker, Chief Judge, Fourth Circuit.

[fol. 36] OPINION—Filed May 19, 1953

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 6572

BENJAMIN STEIN and RENA STEIN, Doing Business as Reglor
of California, Appellants,

versus

EMANUEL L. MAZER and WILLIAM ENDICTER, Doing Business
as June Lamp Manufacturing Company, Appellees

Appeal from the United States District Court for the
District of Maryland, at Baltimore. Civil

Argued April 17, 1953. Decided May 19, 1953

Before Parker, Chief Judge, and Soper and Dobie, Circuit
Judges

George E. Frost (Joseph T. Brennan, 2d, and Will Freeman on brief) for Appellants; Max R. Kraus for Appellees; and Warren E. Burger, Assistant Attorney General, Paul A. Sweeney and Benjamin Forman, Attorneys, Department of Justice, and George D. Cary, United States Copyright Office, on brief for the Register of Copyrights as *amicus curiae*.

[fol. 37] DOBIE, Circuit Judge:

Plaintiffs instituted a civil action against defendants in the United States District Court for the District of Maryland, seeking an injunction and damages for the alleged infringement of six copyrights for small three-dimensional statuettes of male and female dancing figures made of semi-vitreous china. Registration of these statuettes was duly granted to the plaintiffs by the Copyright Office. The District Court dismissed the complaint of plaintiffs, who have appealed to us. The decision of the District Court appears to be virtually a holding that a work of art which may be, and is, utilized for some practical purpose, may be protected only by a design patent and not by copyright. No question of unfair competition is here involved, only the

validity of the copyrights is in issue. We think the District Court erred in holding the copyrights invalid. The judgment below must, accordingly, be reversed. The Register of Copyrights was permitted to file with us a brief as *amicus curiae*.

The works of plaintiffs here involved were executed by preparing original sketches, sculpturing the resulting figures in clay on a clay armature, and then preparing a mold from the clay sculpture for casting copies. The specimens submitted to the Copyright Office were in statue form. We think these statues may fairly be classified as "works of art."

Plaintiffs are in the business primarily, almost exclusively, of making and selling these statues in lamp form, though a few, very few, of the copyrighted statues have been sold as statues. The copyrighted figures have been sold by defendants as parts of complete lamps, of which they form the base portion. Beyond any dispute, defendants have meticulously and in minute detail copied every element of the copyrighted statues of the plaintiffs.

It is highly important, at the outset, to distinguish between a design patent and a copyright. Although similar in some respects, the two disclose significant differences. Of particular importance here are the requirements for their issuance and registration and the extent of the protection they afford. A design patent may be obtained only for a "new, original and ornamental design for an article of manufacture." 35 U. S. C. A. (1952 Supp.) 171. To be valid, therefore, a patent "must disclose a high degree of uniqueness, ingenuity and inventiveness." *Alfred Bell & Co. Ltd. v. Catalda Fine Arts, Inc.*, 191 F. 2d 99, 100. A copyright, on the other hand, may be registered if the particular work is "original," i. e., if it owes its origin to the "author." *Burrow-Giles Lithographic Co. v. Sarony*, 111 U. S. 53, 57-58. It is "valid without regard to the novelty or want of novelty of its subject matter." *Baker v. Selden*, 101 U. S. 99, 102.

Because the standards for obtaining copyright protection are of a lower order than those required for design patents, the protection granted under a copyright is more limited. Since a copyright is intended to protect authorship, the essence of copyright protection is the protection of origi-

nality rather than novelty or invention. *Bleistein v. Donaldson Lithographing Co.*, 188 U. S. 239, 249-250; *Baker v. Selden*, 101 U. S. 99, 102-104. Said Circuit Judge Frank in *Alfred Bell & Co. Ltd. v. Catalda Fine Arts, Inc.*, 191 F. (2d) 99, 103:

“ * * * ‘independent reproduction of a copyrighted * * * work is not infringement’ whereas it is *vis a vis* a patent. Correlative with the greater immunity of a patentee is the doctrine of anticipation which does not [fol. 39] apply to copyrights: The alleged inventor is chargeable with full knowledge of all the prior art, although in fact he may be utterly ignorant of it. The ‘author’ is entitled to a copyright if he independently contrived a work completely identical with what went before; similarly, although he obtains a valid copyright, he has no right to prevent another from publishing a work identical with his, if not copied from his. A patentee, unlike a copyrightee, must not merely produce something ‘original’; he must also be ‘the first inventor or discoverer.’ Hence it is possible to have a plurality of valid copyrights directed to closely identical or even identical works. Moreover, none of them, if independently arrived at without copying, will constitute an infringement of the copyright of the others.”

More tersely put, “a copyright on a work of art does not protect a subject, but only the treatment of a subject.” *F. W. Woolworth Co. v. Contemporary Arts*, 193 F. (2d) 162, 164, affirmed, 344 U. S. 228. See, also, Copinger, “The Law of Copyrights” (7th Ed. 1936); Admur, “Copyright Law and Practice” (1936); *Ricker v. General Electric Co.*, 162 F. (2d) 141, 142; *Arnstein v. Edward B. Marks Music Corporation*, 82 F. (2d) 275; *Sheldon v. Metro-Goldwyn Pictures Corporation*, 81 F. (2d) 49, 54; *Gerlach-Barklow Co. v. Morris and Bendien*, 23 F. (2d) 159, 161.

The life of a copyright is much longer than that of a design patent. For our purposes, the subject matter of a copyright includes (17 U.S.C.A. § 5 (g) and (h)): “works of art; models or designs for works of art; reproductions of a work of art.” The design patent primarily extends to “any new original and ornamental design for an article of manufacture.” 35 U. S. C. A. § 171.

Plaintiffs do not contend that defendants may not law- [fol. 40] fully produce and sell an electric lamp whose base is a sculptured, human, dancing figure. Nor do plaintiffs contend that defendants may not lawfully produce and sell an electric lamp whose base is an *authorized copy* of the sculptured, human, dancing figures copyrighted by plaintiffs. Plaintiffs argue only that the production and sale of an electric lamp whose base is an *unauthorized copy* of the copyright statue of plaintiffs is an infringement of the copyright. Thus, the issue is not whether a design of an electric lamp may be protected as a monopoly by means of a copyrighted registration. Rather, the issue is whether a copyrighted statue may be *copied* irrespective of its use as a statue or as a component part of an electric lamp, or any other article of manufacture.

We append pertinent portions of the Design Patent Statutes and the Copyright Statute:

The Design Patent Statutes

“1842—(5 Stat., 543)

Section 3. * * * That any citizen * * * who by his * * * own induced any new and original design for a manufacture, whether of metal or other material or materials, or any new and original design for the printing of woolen, silk, cotton, or other fabrics, or *any new and original design for a bust, statute, or bas-relief* or composition in alto or basso relievo, or any new original impression or ornament, or to be placed on any article of manufacture, the same being formed in marble or other material, or any new and useful pattern, or print, or picture, to be either worked into or worked on, or printed or painted or cast or otherwise fixed on, any article of manufacture, or *any new and* [fol. 41] *original shape or configuration of any article of manufacture*, * * * may obtain a patent therefor.”
1861—(12 Stat., 246).

Section 3 of the 1842 Patent Act re-enacted.

1870—(16 Stat., 198).

Section 71. “* * * That any person who, by his own industry, genius, efforts, and expense, has invented or

produced any new and *original design for a manufacture, bust, statue, alto-relievo, or bas-relief*; any new and original design for the printing of woolen, silk, cotton, or other fabrics; any new and original impression, ornament, pattern, print, or picture, to be printed, painted, cast or otherwise placed on or worked into any article of manufacture, or *any new, useful, and original shape or configuration of any article of manufacture*, * * * may, * * * obtain a patent therefor.”
1874—(Section 4929, Revised Statutes).

Section 71 of the 1870 Act re-enacted.

1902—(32 Stat., 193).

“Any person who has invented any new, original, and ornamental design for an article of manufacture, * * * may, * * * obtain a patent therefor.”

1952—(35 U. S. C. 171, 66 Stat. 792).

“Whoever invents any new, original and *ornamental design for an article of manufacture* may obtain a patent therefor, * * *.”

[fol. 42] The Copyright Statutes

1870—(16 Stat., 198, 212).

“Section 86. Any citizen of the United States * * * who shall be the author, inventor, designer, or proprietor of any book, map, chart, dramatic or musical composition, engraving, cut, print, or photograph or negative thereof, or of a painting, drawing, chromo, *statue, statuary, and of models or designs intended to be perfected as works of the fine arts*, * * * shall * * * upon complying with the provisions of this chapter, have the sole liberty of printing, re-printing, publishing, completing, copying, executing, finishing and vending the same, * * *.”

1874—(Section 4952, Revised Statutes.).

Section 86 of the 1870 Act re-enacted.

1909—(35 Stat. 1076).

“Section 5. * * * The application for registration shall specify to which of the following classes the work in which copyright is claimed belongs: * * *

(g) *Works of art; models or designs for works of art;*

(h) Reproductions of a work of art; * * *.”

1948—17 U.S.C. 5, 61 Stat. 652.

Section 5 of the 1909 Act re-enacted.

(Italics ours.)

Also we set out the applicable Copyright Regulations of 1926 and 1950:

[fol. 43]

1926
Regulation

(17 U. S. C. A. West Bound Vol. p. 182)

“12 (g) *Works of art and models or designs for works of art.* This term includes all works belonging fairly to the *so-called fine arts* (paintings, drawings and sculpture.

The protection of productions of the industrial arts utilitarian in purpose and character, even if artistically made or ornamented depends upon action under the patent law; but registration in the Copyright Office has been made to protect artistic drawings notwithstanding they may afterwards be utilized for articles of manufacture.

Toys, games, dolls, advertising novelties, instruments or tools of any kind, glassware, embroideries, garments, laces, woven fabrics, or similar articles are examples. The exclusive right to make and sell such articles, should not be sought by copyright registration.”

Present Regulation

1950

Regulation

(as amended to July 1, 1952)

(17 U. S. C. A. 1 (1952) p. 332-333)

“202.8 Works of art (Class G)—(a) in general. This class includes works of artistic craftsmanship, in so far as their form but *not their mechanical or utilitarian aspects, are concerned*, such as artistic jewelry, enamels, glassware, and tapestries, as well as all works belonging to the fine arts, such as paintings, drawings and sculpture * * *.” (Italics ours.)

Certainly very germane here is the testimony of Mr. Arthur Fisher, Register of Copyrights, who speaks from **experience and with authority**. He is in charge of the Copyright Office and supervises the registration of claims to copyright and the making of rules and regulations by that office. He testified that at the time he came to the Copyright Office in 1946 the practice was well established of registering “any work which in our opinion is a work of art, even though such work has a mechanical or utilitarian aspect.” Mr. Fisher further testified that this practice is now covered by Regulation 202.8. From his testimony, we quote:

“* * * it is the practice of the Copyright Office to make a determination as to whether the work submitted is or is not a work of art. The phrase ‘insofar as their form but not their mechanical or utilitarian aspects are concerned’ is interpreted by the office and by our examiners to permit them to deal only with the question of whether the work is a work of artistic craftsmanship, and they consider, it is our practice to consider as immaterial whether the work may also have a mechanical or utilitarian aspect.

We do not consider that we are registering or dealing with that mechanical or utilitarian aspect but are only dealing with the artistic aspect of the work which is submitted under an application for a work of art.

I might give some example of that. For example, if

this Daumier etching, engraving that I have on the walls were framed and were submitted to us with some indication that it was to be used as a modern tea tray with a stand, our office would deal only with the artistic aspect of the work and would not be concerned with [fol. 45] the fact that it also had a utilitarian use or purpose.

Again, we frequently will receive applications for the registration of paintings on plates, for example. We register the painting on the plate but we are not concerned with the fact that the material upon which the painting is made may be intended as an article of utility for the handling of food. In other words the practice of the office with respect to this phrase about which I am asked is not to undertake to register or deal with the mechanical or utilitarian aspects, but exclusively to determine whether the work that is submitted to us is a work of art and we disregard the question of whether it has in addition a mechanical or utilitarian function."

Space limitations prevent any extended discussion of the historical development through the years of the Copyright and Design Patent Statutes. It is worthy of note, in connection with our case, however, that in 1902 Congress narrowed the Design Patent Statute to exclude statuary. Even more important was the change in the Copyright Statute when the term "works of fine arts" found in the 1870 Statute was changed and broadened by the substitution in the Statute of 1909 of the words "works of art." Certainly there are many works of art not included in the fine arts. Mr. Herbert Putnam, Librarian of Congress, testifying before a Committee of the House of Representatives, 1906, stated:

"* * * the term 'work of art' is deliberately intended as a broader specification than 'works of the fine arts' in the present statute with the idea that there is subjectmatter (for instance, of applied design, not yet within the province of design patents), which may properly be entitled to protection under the Copyright [fol. 46] Law." See Hearings before Committee of

Patents, House of Representatives, on S. 6330 & H. R. 19853, 59th Cong., 1st Sess. June 6-9, 1906, p. 11.

Concededly, a copyright does not purport to give to the copyrightee any rights to the mechanical or utilitarian uses of a work of art. A copyright does, however, protect the work of art *qua* work of art without regard to any functional use to which it might be put. A subsequent utilization of a work of art in an article of manufacture in no way affects the right of the copyright owner to be protected against infringement of the work of art itself. The critical inquiry, therefore, is not whether the particular work sought to be registered has utility but whether it is a work of art irrespective of its utility.

Since 1909, it seems to have been the practice of the Copyright Office to grant copyrights to works of art, and to deny copyrights to purely utilitarian objects. An object of artistic conception in a standard art form—e.g., sculpture or painting—has not been denied registration merely because of its possible utilitarian aspects. It is the work of art that is thus protected, not its utilitarian aspects. Thus copyright registration has been granted for stained glass windows, bas-relief bronze doors, sculptures in book-ends, candlestick holders and statuary lamps.

On the other hand, it has been the practice of the Copyright Office since 1909 to refuse copyright registration *only* to those works of a wholly utilitarian nature, which could not be called works of art although they might possess pleasing design. Rejection has been placed on the ground that protection for such works lay only under the Design Patent Law. Thus, registration has been refused for designs for refrigerators, clocks, stoves, gasoline pumps and oil dispensers.

[fol. 47] When an agency of the United States is empowered by a federal statute to issue regulations under, and also to administer and apply, that statute, and when the agency over a course of years applies that statute in a certain way, that application should be given great weight when a court is called upon to determine the meaning of the statute. *Cf. Commissioner v. South Texas Lumber Co.*, 333 U. S. 496, 501; *Merchants National Bank of Boston v.*

Commissioner, 320 U. S. 256, 260; *Textile Mills Securities Corp. v. Commissioner*, 314 U. S. 326, 338, 339.

Said Mr. Justice Holmes in *Bleistein v. Donaldson Lithographing Co.*, 188 U. S. 239, at 251; (in 1903 before the 1909 Copyright Law):

“A picture is none the less a picture, and none the less a subject of copyright, that it is used for an advertisement. And if pictures may be used to advertise soap, or the theatre, or monthly magazine as they are, they may be used to advertise the circus.”

See, also, *Pellegrini v. Allegrini*, 2 F. (2d) 610; *Jones Bros. Co. v. Underkoffler*, 16 F. Supp. 729. Would not Mr. Justice Holmes, in the instant case, say that a statue is just as much a work of art when used to support a lamp as when it is displayed in an art gallery?

Consider Rodin's celebrated statue, “The Thinker.” No one can deny that it is a “work of art” by any definition of the term. Yet it is a matter of common knowledge that this work can—and has, been used in book ends. Under the decision below, the book end form cannot be covered by a copyright of the statue form. We hardly think Congress intended this extreme and harsh result. The same observations might be made of many of the works of the great Benvenuto Cellini which had, potentially at least, utilitarian aspects.

[fol. 48] We now proceed to a discussion of certain of the decided cases which seem to be most closely in point. Defendants rely heavily on *Stein v. Expert Lamp Co.*, 96 F. Supp. 97, affirmed 188 F. (2d) 611, certiorari denied 342 U. S. 829. The opinions of District Judge LaBuy in the District Court in this case and Circuit Judge Kerner in the Court of Appeals each cover less than two printed pages. In Judge LaBuy's opinion he states (96 F. Supp. at page 97):

“In plaintiff's reply brief it is asserted two models of the statuettes, one female and one male, were submitted to the copyright office and these models were in the ‘form of lamp bases having the threaded mounting stub to receive a lamp socket.’

Again, at page 98:

"It would seem that plaintiff's submission of the statuettes with the lamp mounting stubs to the copyright office was evidence of the practical use to which they were intended to be put. Had it been merely the statuette, use of the statuette thereafter in any practical manner would not remove it from the scope of copyright protection. Having submitted the statuette as a lamp base, thereby limiting the use of the statuette, plaintiff cannot monopolize such use under the copyright statu(t)e."

And Judge Kerner remarked (188 F. (2d) at p. 612:)

"It is true that plaintiffs have never manufactured and sold any statuettes such as they registered in the Copyright Office; they have, however, manufactured and sold electric table lamps which embody the design of the Copyrighted Statuettes, marked with a copyright notice, * * *."

[fol. 49] In the case before us, the statuettes were submitted to the Copyright Office in statuette form, not in the form of lamp bases. And some, though not many, of the copyrighted statuettes have been sold by plaintiffs as, and in the form of, statuettes. If this case be not distinguishable, we decline to follow it.

Stein v. Benaderet, 109 F. Supp. 364, followed the Expert case. District Judge Picard, however, made this pertinent observation (109 F. Supp. at page 365):

"When the *Stein v. Expert Lamp Co.*, *supra*, opinion was first published by Judge LaBuy in the district court it was opened to objection that the court had misunderstood the facts; that he was under the impression that when the statuettes were presented to the Copyright Office they displayed wires and sockets attached thereto so that it was apparent right from the beginning that they were to be used as lamp bases. However, this mistake was rectified before the matter reached the court of appeals after plaintiffs had directed the district court's attention to his alleged error and who then ruled that it was immaterial whether the article copy-

righted had wires or sockets since it was obviously intended to be used for a lamp base."

In *Stein v. Rosenthal*, 103 F. Supp. 227, District Judge Tolin refused to follow the Expert case. He pointed out (103 F. Supp. at page 229):

"The photographs of the statuettes deposited with the Copyright Office, as part of the claimed copyright in a reproduction of a work of art, are photographs of mere statues alone without electrical assemblies, lamp shades, lamp mounting stubs or any other addition to the purely artistic sculpture. Insofar as the copyright [fol. 50] registration shows, the several works registered are statues only. There is no suggestion in any of the several claims to copyright of any claim except the form of the figures. There are no mechanical or utilitarian aspects to the statues. None of the claims to copyright suggest any utilitarian use and if adaptability to such a purpose were to be sought solely from examination of the copyrighted material, the result would be negative."

And again (103 F. Supp. at page 230), he stated:

"The point, insofar as this case is concerned, is simply that the copyrighted material is in itself non-utilitarian and non-mechanical. Protection is not dissipated by taking an unadulterated object of art as copyrighted and integrating it into commercially valuable merchandise. The appropriateness of copyright registration is determined by the character of the registered work of art as registered and not by the ability, intent or hope of the registrant to use it as a dress for a utilitarian object. Copyright protection is not reserved exclusively to proprietors who do not intend to earn money by commercialization of their art."

Also (103 F. Supp. at page 231), Judge Tolin remarked:

"Having qualified for registration by reason of its purely artistic character, the question presented is whether an intent on the part of the claimant to copy such protected sculpture in such a way as to artistically

enhance some separate and utilitarian article of manufacture destroys the right to copyright. The argument that this is so is but another vehicle to carry defendants' philosophy that if the artist intends to profit by [fol. 51] his creation he cannot acquire protection. To uphold this argument would be to require the Judicial inquiry to plumb the mind of every copyright proprietor and determine his plans and intentions as of the time of registration. This impossibility is not contemplated by the Statute."

We greatly prefer the reasoning here to that in the Expert case. It is quite clear that the District Judge in our case relied heavily on the Expert case and found "unconvincing the District Court's reasoning" in the Rosenthal case.

For Law Review notes taking exception to the Expert case, see 27 Indiana L. J. 130; 21 George Washington L. Rev. 353; 66 Harvard L. Rev. 877. We append a brief extract from each of these notes:

"This language indicates the purpose of the regulations to be an extension of copyright registration to all works of artistic craftsmanship even though the work may be embodied in an article that is essentially utilitarian rather than aesthetic in purpose." 27 Indiana L. J. 131.

"It would appear, then, from the decisions reached in the foregoing cases, that it does not matter to what subsequent use the copyrighted article is to be put, so long as the article, as submitted to the Copyright Office, is purely and simply a work of art." 21 Geo. Wash. L. Rev. 359.

"The argument that useful articles purporting to be works of art should be excluded from copyright because they may qualify for a design patent is not convincing." 66 Harv. L. Rev. 882.

See, also, Derenberg, "Copyright Law," 1948 Annual Survey of American Law, 777; Weil, "Copyright Law," 625; Umbreit, "A Consideration of Copyright Law," 87 Univ. of Pa. L. Rev. 932.

King Features Syndicate v. Fleisher, 299 Fed. 533, involved an issue somewhat similar to that of the instant case.

There the "Barney Google and Spark Plug" cartoons were copyrighted. These copyrights were based on sketches deposited in the Copyright Office. The defendants copied the sketches in a three-dimensional doll form. The Circuit Court of Appeals squarely rejected the argument that execution of the art in a different form avoided infringement.

King Features Syndicate v. Fleisher was followed a decade later by *Fleisher v. Freundlich*, 73 F. (2d) 276. Here the Court held that a doll in the form of "Betty Boop" infringed the Betty Boop cartoons which were copyrighted as works of art. In *Fleisher Studios v. Ralph A. Freundlich, Inc.*, the copyright proprietor, through a licensee, distributed thousands of toys and dolls like those accused as infringements. This did not alter the relief granted since the doll copies in each instance embodied the artistic conception of "Betty Boop." In *Hill v. Whalen & Martell*, 220 Fed. 359, a dramatic performance using actors dressed like "Mutt" and "Jeff" was held to infringe the copyrighted "Mutt and Jeff" cartoons. These cases differed from the instant case in that there the copyrightee did not use the copyrighted material in a form different from the form under which the material was copyrighted. In our case, the material was copyrighted as statuettes, but was afterwards embodied by the copyrightee in a lamp base. Nor did the plaintiffs here create any fictional characters and associate them by name, such as "Barney Google" or "Betty Boop," which became well known to the public.

We are not impressed by the contention of counsel for defendants that the plaintiffs have here misused their copy-[fol. 53] rights and should on that ground be denied relief. Cf. *Morton Salt Co. v. Suppiger Co.*, 314 U. S. 488; *E. I. Horsman & Actna Doll Co. v. Kaufman*, 286 Fed. 372, cert. den. 261 U. S. 615. The equities here, we think, lie with the plaintiffs, not with the defendants, who deliberately and meticulously copied the copyrighted statuettes by incorporating them into lamp bases.

It is strenuously contended by plaintiffs, and by the Government in its brief as *amicus curiae*, that the Copyright Statute and the Design Patent Statute are overlapping—in other words, that there is a field in which an applicant, at his option, could secure either a copyright or a design patent. This is vigorously denied by defendants. We do not

think it necessary, in order to decide the case before us, to pass upon this important question.

All that we hold, and all that we need hold, is that the copyrights of the statuettes granted to plaintiffs were valid, even though plaintiffs intended primarily to use these statuettes in the form of lamp bases and did so use them, and that these copyrights were clearly infringed by defendants, who minutely copied these statuettes in the form of bases for lamps. Plaintiffs are, accordingly, entitled to the appropriate forms of relief usually granted in such cases.

The judgment of the District Court is reversed, and the case is remanded to that court for further proceedings not inconsistent with this opinion.

Reversed and remanded.

[fol. 54] DECREE—Filed and Entered May 19, 1953

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 6572

BENJAMIN STEIN AND RENA STEIN, doing business as REGLO
OF CALIFORNIA, Appellants,

vs.

EMANUEL L. MAZER AND WILLIAM ENDICTER, doing business
as JUNE LAMP MANUFACTURING COMPANY, Appellees.

Appeal from the United States District Court for the
District of Maryland

This cause came on to be heard on the record from the United States District Court for the District of Maryland, and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the judgment of the said District Court appealed from, in this cause, be, and the same is hereby, reversed with costs; and that this cause be, and the same is hereby, remanded to the United States District Court for the District of Maryland, at Baltimore,

for further proceedings not inconsistent with the opinion of the Court filed herein.

John J. Parker, Chief Judge, Fourth Circuit. Morris A. Soper, U. S. Circuit Judge. Armistead M. Dobie, U. S. Circuit Judge.

June 9, 1953, petition of appellees for stay of mandate filed.

[fol. 55] ORDER STAYING MANDATE—Filed and entered
June 9, 1953

(Style of Court and Title Omitted)

Upon the application of the Appellees, by their counsel, and for good cause shown,

It is ordered that the mandate of this Court in the above entitled case be, and the same is hereby, stayed pending the application of the said Appellees in the Supreme Court of the United States for a writ of certiorari to this Court, unless otherwise ordered by this or the said Supreme Court, provided the application for a writ of certiorari is filed in the said Supreme Court within 40 days from this date.

June 9th, 1953.

John J. Parker, Chief Judge, Fourth Circuit.

STIPULATION

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1953

No. —

EMANUEL L. MAZER AND WILLIAM ENDICTER, doing business
as JUNE LAMP MANUFACTURING COMPANY, Petitioners,

vs.

BENJAMIN STEIN AND RENA STEIN, doing business as REGLORE
OF CALIFORNIA, Respondents.

It is stipulated and agreed by and between counsel for the respective parties hereto, that for the purpose of the

petition for writ of certiorari, the printed record may consist of the following:

1. Appendix to brief of appellants in the United States Court of Appeals for the Fourth Circuit.
- [fol. 56] 2. Appendix to brief of appellees in the United States Court of Appeals for the Fourth Circuit.
3. The proceedings had before the United States Court of Appeals for the Fourth Circuit.
4. This stipulation.

It is further stipulated and agreed that the petitioners will cause the Clerk of the United States Court of Appeals for the Fourth Circuit to certify and file with the Clerk of the Supreme Court of the United States the complete record on appeal; and that, in the event the petition for writ of certiorari is granted, the printed record shall consist of the printed record on the petition for writ of certiorari and such additional portions of the certified record as the parties may designate.

It is further stipulated and agreed that the parties hereto may refer in the petition for writ of certiorari and briefs to the record filed in the Supreme Court of the United States, including any part thereof which has not been printed.

June 12, 1953.

Max R. Kraus, Counsel for Petitioners; Will Freeman, George Frost, Counsel for Respondents.

[fol. 57] Clerk's Certificate to foregoing transcript omitted in printing.

ELEED THROUGH

POOR COPY

[fol. 217] SUPREME COURT OF THE UNITED STATES

No. 228, October Term, 1953

EMANUEL L. MAZER and WILLIAM ENDICTER, doing business
as JUNE LAMP MANUFACTURING COMPANY, Petitioners,

vs.

BENJAMIN STEIN and RENA STEIN, doing business as REGLORE
OF CALIFORNIA

ORDER ALLOWING CERTIORARI—Filed October 12, 1953

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit is granted. The Solicitor General is invited to file a brief setting forth, along with other matters he deems pertinent, the views of the Copyright Office and a statement of its relevant practice.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

The Chief Justice took no part in the consideration or decision of this application.

(1120)